No. 976 LIBRARY SUPREME COURT, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. .....

DOUGLAS McCRARY et al.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC., a Corporation.

No. .....

M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN INDUSTRIES, INC., a Corporation.

PETITION FOR WRITS OF CERTIORARI

To the Court of Appeals of Tennessee,
Middle Section at Nashville.

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ALADDIN RADIO INDUSTRIES, INC., a Corporation.

No. .....

M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN INDUSTRIES, INC., a Corporation.

PETITION

of Douglas McCrary, Luther Carroll, L. H. Bradley, Danzel C. Pedigo, Marvin Caylor, M. M. Bratton, Joe Heald, Fred Johnson, Clyde Kennedy, Clyde Bowen, L. D. Bennett, Albert Burnett, Jack Shelton, Floyd Duncan, Thomas Mallory, R. C. Working, R. E. Odom, T. A. Hargis, Don Vestal, and Local Union No. 327 of the Teamsters, Chauffeurs, Helpers and Taxicab Drivers, for Writs of Certiorari to the Court of Appeals of Tennessee, Middle Section at Nashville.

Petitioners pray that writs of certiorari issue to review the judgments of the Court of Appeals of Tennessee, Middle Section at Nashville, entered in the above cases on July 27, 1956. Since these two cases involve identical and closely related questions, and were considered together by the Courts below, a single petition is filed. The record in Aladdin Radio Industries, Inc., will be referred to as (R. ....) and that in Aladdin Industries, Inc. (RA. ....).

The opinions of the Court of Appeals of Tennessee, Middle Section (R. 174, R. 238), are reported at 298 S. W. 2d 770 (App. A, B, pp. 27 to 58).[1] A petition for certiorari to the Tennessee Supreme Court was denied by the Court in each case without opinion (R. 270).

JURISDICTION.

The decrees of the Tennessee Supreme Court denying certiorari were entered February 8, 1957, and the decisions of the Court of Appeals of Tennessee, Middle Section, thereby became final judgments rendered by the highest court of Tennessee in which decisions could be had.

Jurisdiction of this Court rests upon 28 U. S. C. Section 1257 (3).

QUESTIONS PRESENTED.

1. Does a State court of equity have jurisdiction (by mandatory injunction) to compel truck drivers of an interstate common carrier to cross a peaceful picket line lawfully advertising existence of a strike against an interstate employer by employees of that employer?

2. Does a State court of equity have jurisdiction (by mandatory injunction) to compel truck driver members of one union to cross a peaceful, lawful picket line of another recognized union, when the truck drivers are engaged in interstate employment under a collective bargaining contract providing that a refusal to go through such a picket line of another union shall not constitute a breach of the contract or grounds for discharge?

3. Does the refusal by members of one union, engaged as interstate truck drivers, to cross a peaceful, lawful,

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[1] The decrees of the trial Court, Chancery Court of Davidson County, Tennessee, are not officially reported (R. 44, 48; RA. 108, RA. 208. RA. 210) (App. C, D, pp. 59 to 74).

picket line of another union, constitute protected activity under the National Labor Relations Act, as amended? (29 U. S. C. 141, et seq., hereinafter referred to as the Act.)

4. Has the field of relief against refusal by truck drivers employed by interstate carriers to cross a peaceful picket line (of their own or of other unions), been pre-empted by the Congress, either by (a) the Act, or by (b) the Interstate Commerce Act, Part II, 49 U. S. C. 301, et seq.?

5. Does a State court of equity have jurisdiction to compel crossing of a peaceful picket line as posed in questions "1" through "4" by virtue of State law requiring common carriers to serve customers without discrimination?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitutional and statutory provisions involved here are Article VI, of the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, 29 U. S. C. 157, et seq., 61 Stat. 140; the Interstate Commerce Act, Part II, 49 U. S. C. 301, 316 (d), 322 (b), 54 Stat. 919; and the Tennessee Statutes relating to common carriers, T. C. A. 65-512, 514 (App. E. pp. 75 to 79).

First:

McCRARY et al., Petitioners

v.

ALADDIN RADIO INDUSTRIES, INC.

STATEMENT.

Petitioners are individual truck drivers. They are members of Local Union No. 327 of Teamsters, Chauffeurs, Helpers and Taxicab Drivers in Nashville, Tennessee.

They are employed by interstate carriers who customarily service the plant of respondent Aladdin Radio Industries, Inc., an interstate industry in that city (hereinafter referred to as Radio). Radio is a subsidiary of Aladdin Industries, Inc. (hereinafter referred to as Industries), and both companies occupy a common premises with a common entrance. Employees of each company are represented by separate, certified local unions: Local Union No. 5003 of the United Steelworkers of America is the certified representative of the employees of respondent; Local 4802 of the United Steelworkers of America represents the employees of Aladdin Industries, Inc.

Upon expiration of the collective bargaining contract between Local 5003 and Radio on January 24, 1955, Radio's employees went on strike, and peaceful picketing was begun. Employees of Industries did not strike and did not honor the picket lines.

Petitioners, as employees of interstate carriers, are beneficiaries of and covered by a collective bargaining agreement. The agreement provides that refusal to cross a picket line shall not be either a violation of the contract or grounds for discharge (R. 32, 58; RA. 510). Petitioners refused to cross the peaceful picket line established by United Steelworkers Local 5003 at Radio's plant. Radio then filed a complaint for injunction in the Chancery Court of Davidson County, Tennessee, against the interstate carriers who employ petitioners. The complaint did not allege that any violence or breach of the peace had occurred, or that picketing of Radio's plant was in any manner unlawful. It alleged only that "The continuation of complainant's business is dependent to a large extent on the services of common carriers by truck in both interstate and intrastate commerce ... .", and that employees of the carriers "have refused to cross picket lines which have been stationed outside of complainant's said plant

. . . said pickets in the vicinity of complainant's . . . plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's . . . plant . . . [and] the defendants . . . are also violating their statutory duties as common carriers which require them to serve all members of the public without discrimination . . . Said discrimination against the complainant . . . is made unlawful by Sections 5416 and 5418 of the Code of Tennessee and by Title 49, United States Code, Section 3 (1)" (R. 8, 10). Relief was prayed for against the carriers and against the employees of those carriers, a class that includes petitioners. Granting the prayer of that complaint, the Chancery Court, on March 29, 1955, issued a mandatory injunction, requiring the carriers, by whom petitioners are employed as truck drivers, and the carriers' employees and agents, to resume rendering to respondent their customary carrier service which had stopped when members of Local No. 327, including petitioners, refused to cross the Steelworkers' peaceful picket line (R. 17) (App. F. pp. 80 to 81).

Petitioners were cited for contempt of this mandatory injunction in refusing to make deliveries to respondent's picketed plant. The Chancery Court by decree of April 19, 1955 (R. 44), in effect determined that the picketing had been peaceful, found, therefore, no "just cause or excuse for violating said injunction", and fined each petitioner $50.00.[2] Petitioners duly moved the Chancery Court to grant a new trial and to set aside the order holding them in contempt, upon grounds including:

> "1. This Honorable Court is without jurisdiction of the subject matter of this suit, jurisdiction being exclusively in the National Labor Relations Board

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[2] The Court of Appeals of Tennessee agreed that the picketing was entirely peaceful (R. 236).

pursuant to the Acts of Congress and particularly the National Labor Relations Act and the Taft-Hartley Act, 29 U. S. C. A. 141 et seq." (R. 46).

On June 13, 1955, the Chancery Court observed:

> "The recent decision of the Supreme Court of the United States in General Driver, Warehousemen and Helpers, Local Union No. 89, etc., v. American Tobacco Company, Inc., decided April 4, 1955, created doubt in the mind of the Court and also among others as to whether or not the injunction sought to be enforced by said contempt petition [and under which petitioners were convicted] was issued within the jurisdiction of this Court and is valid and enforceable. The Court, however, on May 27, 1955, announced in open Court that said doubt has now been resolved and that this Court has not exceeded its jurisdiction and said injunction is valid and will be enforced henceforth by the Court, even though it requires employees of the common carrier defendants to cross a picket line at complainant's plant . . . the injunction heretofore issued in this case will be strictly enforced even though it requires the employees of common carrier defendants to cross a picket line at the complainant's plant, provided, however, that no person shown to be a bona fide member of Local Union No. 5003 of the United Steelworkers of America, CIO, a duly authorized collective bargaining representative of a recognized bargaining unit of employees at the complainant's plant, will be required to cross the picket line of said Union at said plant" (R. 48-50).

The Chancellor thus pronounced that he would give his injunction only prospective operation. Nevertheless, by separate order entered simultaneously with that pronouncement, he disallowed and overruled petitioners' motion for new trial; and left their conviction for contempt in effect (R. 51).

By petition for certiorari to the Tennessee Court of Appeals, petitioners sought immediate review of the Chancery Court's order of June 13th. The petition alleged that the order was void and that the Chancery Court had no jurisdiction of the subject matter for the reason that a labor dispute was involved, jurisdiction of which had been given exclusively to the National Labor Relations Board. The Court of Appeals of Tennessee denied that petition, concluding that the present case had not been pre-empted by Federal authority and remains within the jurisdiction of the State court. In doing so, the Court of Appeals pointed out, however:

> ". . . petitioners have another plain, speedy and adequate remedy. If a judgment should be entered against them in this ancillary contempt proceeding, such judgment would be final and appealable as of right, even though the principal case is still pending. B. F. Stief Jewelry Co. v. Walker, 36 Tenn. App. 427, 256 S. W. 2d 392.
>
> "Having this remedy of appeal, petitioners are not entitled to the writs of certiorari and supersedeas. Gilbreath v. Ferguson, 195 Tenn. 528, 260 S. W. 2d 276; Helton v. State, 194 Tenn. 299, 250 S. W. 2d 540." (R. 170, R. 118).[3]

Thus, the Chancery Court's order refusing to order a new trial was left in effect and unreviewed. From that refusal to order a new trial, petitioners then duly appealed to the Supreme Court of Tennessee. Assignments of error in their appeal took the Chancellor's error in "assuming

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[3] The Court of Appeals of Tennessee acted (R. 170) in reliance upon its opinion in the companion case of *Aladdin Industries, Inc., v. Associated Transport, Inc., et al.*, which appears at R. 118, Appendix G hereto. The decisions of the Court of Appeals of Tennessee on the petitions for certiorari are unofficially reported as *Aladdin Radio v. Adkins Transfer Co.*, Tenn. Ct. of App., July 22, 1955, 36 LRRM 2571, and *Aladdin Industries, Inc., v. Associated Transp., Inc., et al.*, 36 LRRM 2566.

jurisdiction of this cause, and ordering the issuance of the injunction of the petition for attachment for contempt against appellants . . . This was error because under the Acts of Congress the exclusive jurisdiction of this controversy was in the National Labor Relations Board, and the Chancery Court was accordingly without jurisdiction of the subject matter or the parties (Brief, infra, p. 137)" (R. 65).[4]

In support of error thus assigned, petitioners stated:

> "The question for determination under the first assignment of error is whether or not Congress by enacting the National Labor Relations Act and the Labor Management Relations Act has pre-empted the field of Labor Relations so that the State Court is without jurisdiction to issue a mandatory injunction requiring common carriers engaged in interstate commerce, their officers, agents and employees to cross a picket line at a plant where a labor dispute is involved and bona fide and legal picket lines established . . . It is, of course, well settled that a state law or regulation cannot invade an area for which valid exclusive federal regulation has been provided, and an attempt to do so is unconstitutional under the Commerce and Supremacy Clauses of the Federal Constitution. It is appellants' [petitioners'] position that Congress has accorded primary and exclusive jurisdiction over the general subject matter of the present controversy to the National Labor Relations Board, and, therefore, the injunction is invalid because it was issued without jurisdiction . . . (R. 86, 87) . . . the matters in controversy involved an area that has been pre-empted

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[4] Collateral attack on a decree entered without jurisdiction may be made, under Tennessee practice, by appeal from an order of contempt for violation of the void order. *Aladdin Radio v. Adkins Transfer Co.*, supra; *Aladdin Industries, Inc., v. Associated Transp., Inc.*, supra.

by the Acts of Congress and the State Court is wholly without jurisdiction either to grant the injunction or to hold appellants in contempt . . . (R. 91). Appellants respectfully submit that the Chancery Court in the present controversy, by issuing the mandatory injunction requiring appellants to cross legal picket lines, was prohibiting the exercise of rights which the federal Act protects, and that the holding of the Chancellor is contrary to the holding of the United States Supreme Court in the **Garner** case, **Amalgamated Association** case and **American Tobacco Co.** case, and based on these decisions, interpreting the extent of the area Congress intended to protect, the decree holding appellants in contempt of Court should be reversed" (R. 112, 113).

As permitted in Tennessee procedure, petitioners' appeal to the Supreme Court of Tennessee was, by discretion, transferred by that Court to the Court of Appeals of Tennessee, Middle Section at Nashville. (See Opinion of Court of Appeals, R. 178.)

In reply to petitioners' appeal and assignments of error, Radio asserted that (1) the Chancery Court had jurisdiction to issue the injunction and to order petitioners held in contempt, and (2) the controversy disclosed by the pleadings was not withdrawn from State action by the Labor Management Relations Act (R. 140).

On July 27, 1956, the Court of Appeals of Tennessee, Middle Section at Nashville, overruled petitioners' assignments of error and affirmed the decree of the Chancellor that had held petitioners in contempt. In doing so, the Court of Appeals of Tennessee stated:

"Appellants [petitioners] contend: (1) that the court below had no jurisdiction of the subject matter of this suit, because it involved a labor dispute the

exclusive jurisdiction of which was in the National Labor Relations Board . . . (1) This is a companion case to the case of Aladdin Industries, Inc., v. Associated Transport, Inc., et al., Davidson Equity, opinion filed July 27, 1956. The jurisdictional facts in the present case are not materially different from those in that case, and what was there said will suffice for a discussion of the question of jurisdiction here. Our conclusion is that this is not a labor dispute but a controversy between a shipper and defaulting carriers and that the court below had jurisdiction of the subject matter and of the parties" (R. 178). . . .

On October 10, 1956, petitioners duly filed their petition for writ of certiorari to the Supreme Court of Tennessee. In summary, the question presented by that petition for certiorari was:

> "Does a state court have jurisdiction to issue a mandatory injunction requiring employees of common carriers engaged in interstate commerce to cross the picket line of a certified union and pick up and deliver shipments of goods in interstate commerce, or is this a matter within the exclusive jurisdiction of the National Labor Relations Board under the appropriate acts of Congress?" (R. 185).

Assignments of Error in the petition for certiorari to the Supreme Court of Tennessee recited:

> "The Court of Appeals erred in holding that the Chancery Court of Davidson County, Tennessee, had jurisdiction of the subject matter of this suit and of the parties. Tr. pp. 12, 35, Opin. Ct. of App.
>
> "This was error because, under the Acts of Congress, exclusive jurisdiction of this cause was in the National Labor Relations Board" (R. 194).

In reply to the petition for certiorari to the Supreme Court of Tennessee, Radio noted:

". . . . the Court of Appeals [herein] unanimously affirmed [the judgment of contempt] with an opinion by Judge Felts filed July 27, 1956. In said opinion Judge Felts refers to, and adopts his opinion filed on the same date in a companion case, entitled Aladdin Industries, Inc. v. Associated Transport, Inc. et al., wherein there was a full discussion and decision of the same jurisdictional issues which the appellants have raised in this case . . . . (R. 214).

"In support of the petition for certiorari there are three assignments of error. Assignment of Error I raises the issue as to whether or not the chancery court had jurisdiction of the subject matter of this suit and of the parties . . . ." (R. 216).

Although the opposing certiorari by the Supreme Court of Tennessee, respondent admitted both the peaceful nature of the picket line that was involved and the absence of proof of possible violence: "Presumably no such proof was available, for as appellants concede in their argument (pp. 38-39), 'There is neither an allegation nor suggestions that the picket lines were anything but peaceful'" (R. 222). Nevertheless, Radio's support of the Chancellor's decree of contempt insisted "that the refusal by a person to enter on premises of an employer (other than his own), while a lawful strike is in progress at such premises, is neither an unfair labor practice prohibited by federal statute nor a lawful concerted activity protected by federal statute" (R. 227).

On February 8, 1957, without opinion, the Tennessee Supreme Court denied the petition for certiorari (R. 270).[5]

[5] Stay of execution of the decree and judgment of the Court of Appeals of Tennessee was granted to enable petitioners to apply to this Court for certiorari (R. 274). Petitioners' application for such stay recited: "The grounds upon which said petition for certiorari will be based are as follows: 1. The state court was without jurisdiction of the subject matter and the parties in this cause, exclusive

THE REASONS FOR GRANTING THE WRIT.

1. The decision below is, we respectfully submit, directly in conflict with this Court's holding in **General Driver, Warehousemen and Helpers, Local Union No. 89, etc., v. American Tobacco Co.**, 348 U. S. 978, reversing, **Drivers Union v. American Tobacco Co.**, Ken. Ct. of App., 264 S. W. 2d 250.

Beyond disregard of the precisely apt decision in **American Tobacco Co.**, the Tennessee Court of Appeals has also failed to follow the entire line of authorities that this Court has established delineating Congressional pre-emption of the field of industrial relations in interstate industries. Both the Chancery Court of Davidson County, Tennessee, and the Court of Appeals of Tennessee, Middle Section at Nashville, entertained, however, apparent doubts as to the correctness of the respective results each reached. And, unless reviewed here, those results will serve to unsettle a large area of settled application of the pre-emption doctrine which decisions of this Court have defined.[6]

The **American Tobacco Co.** case has made clear that the duty not to discriminate in handling shipments, owed by interstate common carriers to the public, does not invest State courts with jurisdiction to compel employees of those carriers to cross a peaceful picket line.[7] Additionally,

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jurisdiction being vested in the National Labor Relations Board and/or the Interstate Commerce Commission, pursuant to Acts of Congress. 2. The activities for which the appellants were enjoined, and later held in contempt of court, were protected activities pursuant to Acts of Congress" (R. 272).

[6] The present petition is substantially similar to that currently pending in *Teamsters, Chauffeurs, Helpers & Taxicab Drivers v. Kerrigan Iron Works, Inc.*, S. Ct. of U. S., No. 818; October Term, 1956.

[7] "Refusal to cross a picket line as a protected activity has been recognized administratively, *Re DeCordova*, 91 NLRB 1121, and by the courts. See, e. g., *NLRB v. Montag Bros.*, 140 F. 2d 730; *J. A. Bently Lumber Co. v. NLRB*, 180 F. 2d 641.

that decision is precise authority for petitioners' position that relief against activities for which petitioners have been held in contempt cannot be had by resort to State injunctive procedures. No material distinction exists between the case at bar and **American Tobacco Co.** The Tennessee Court of Appeals' erroneous conclusion "that this is not a labor dispute but a controversy between a shipper and defaulting carriers" (R. 235), not only ignores the principles for which **American Tobacco** is authority, but overlooks the record facts that the injunction runs against all "employees" of the carriers, and petitioners as a class were made parties-defendant to the complaint by order of the Chancery Court (R. 34). Radio sought, and obtained, injunctive relief against petitioners as a class of "employees". That injunctive relief was sought and granted because petitioners' conduct as truck drivers, was alleged to be adversely affecting respondent's interstate economic interests. Petitioners, however, say their conduct is protected under the Act. Therefore, a very real controversy exists between petitioners and respondent, in an area of industrial relations over which Congress has taken full hold.

2. The injunction of the Tennessee Court regulates—indeed it destroys—the right of employees of interstate carriers to refuse to enter the premises of an employer whose employees are peacefully engaged in strike activity approved by the striking employees' duly certified bargaining agent. The State court thus attempts to regulate the identical conduct governed by the Act in Sections 7 and 8 (b) (4). That, the State court cannot do. And such regulation is no less beyond the powers of the State simply because the interstate labor relations involved are those of an employer under peculiar obligation to serve the public. **Amalgamated Association v. Wisconsin Board**, 340 U. S. 383.

3. The strike at respondent's plant, an interstate industry, is clearly a protected activity under the Act. **Amalgamated Association v. Wisconsin Board**, supra; **Auto Workers v. O'Brien**, 339 U. S. 454, 456, 457. So, too, the peaceful picketing that petitioners have been ordered to nullify and ignore. **Weber v. Anheuser-Busch**, 348 U. S. 468; **Garner et al. v. Teamsters Local Union 776**, 346 U. S. 485; **United Mine Workers v. Arkansas Oak Flooring Co.**, 351 U. S. 62, 75. The Tennessee Court was therefore without authority directly to terminate that strike or that peaceful picketing. Id. And, that would be true (1) irrespective of whether the State court felt that petitioners' activities "have neither been approved nor prohibited by the National Labor Relations Act . . ." (Cf. **Newberry v. Retail Clerks, 296 P. 2d. 375, 378**, rev. per curiam, **Retail Clerks International Ass'n, Local 560, v. J. J. Newberry Co., 352** U. S. **990**; or (2) even if no remedy of the type sought is available under the Federal Act.[8]

However, in order for the concerted activity embodied in this peaceful picketing to have real meaning, it must be equally free from indirect encroachment and destruction by State court action. The theory of the proceeding for relief in the State court cannot be controlling. When "federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right. To the extent that the private right may conflict with the public one, the former is superseded." **Garner et. al., v. Teamsters, Local Union 776**, supra, at 500. Here, by indirection, the State court has circumvented the provisions of

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[8] *Gus v. Utah Labor Relations Bd.*, . . . U. S. . . ., 77 S. Ct. 598, Mar. 25, 1957; *Amal. Meat Cutters, etc., v. Fairlawn Meats, Inc.*, . . . U. S. . . ., 77 S. Ct. 604, Mar. 25, 1957; *San Diego Bldg. Trades Council v. Garmon*, . . . U. S. . . ., 77 S. Ct. 607, Mar. 25, 1957.

the Federal Act and has thereby rendered the protected activity a nullity. Little practical difference would result between a State court order requiring the removal of this peaceful picketing—and the challenged mandatory injunction requiring petitioners, upon pain of contempt, to ignore the picket line. In either event, the effect upon the federally-protected concerted activity is immediate, drastic and destructive.[9]

Respondent has mistakenly sought a probably unavailable form of relief in a forum totally without authority to act. But that mistake does not necessarily establish either that no relief is available under the Federal Act, or that Congress has not dealt with the subject matter in controversy. On the contrary, Congress, in Sections 8 (b) (4) (A) and (B) of the Act has dealt exhaustively with one employer's privileged action with respect to, and right to relief against, actions by employees of another. And the National Labor Relations Board has been seriously concerned with complaints for such relief, particularly in the trucking industry. See, e. g., **McAllister Transfer, Inc.**, 110 NLRB No. 224; **Thurston Motor Lines, Inc.**, 110 NLRB No. 122; **Local 270, Int'l Bro. of Teamsters (AFL-CIO)**, 117 NLRB No. 132; **NLRB v. Truck Drivers Local Union**, ... U. S. ....; 77 S. Ct. 643, April 1, 1957.

The exclusive primary jurisdiction of that Board cannot be avoided by the mere form of respondent's pleading in the State court. Nor can such avoidance be achieved by respondent's election to seek relief against petitioners as a class of another employer's employees, without formally naming petitioners' union as such.

4. Petitioners' position in that regard is the more clear by reference to the specific **proviso** of Section 8 (b) (4)

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[9] Congress, it should be noted, has not catalogued all the methods for circumventing the Act. Cf. *Phelps Dodge Corp. v. NLRB*, 313 U. S. 177, 194.

(D) of the Act. The Tennessee Court has misconstrued **NLRB v. Rockaway News Supply Co.**, 345 U. S. 71, and has seriously erred in holding that the right of petitioners to refuse to cross another union's picket line is not protected by Section 7, and "is not a Federally protected right but only a matter of contract and the employer and employee are free to contact as they wish about the matter . . ." (R. 256).

Rockaway did not go so far. The opinion does not reject the proposition—which the dissent there insisted upon—that the right to refrain from crossing picket lines is a right of employees recognized in and protected by Section 7 and is "reserved to each employee by reason of Section 8 (b) (4) (D) of the Act" (At pp. 81, 82). While the majority sustained a collective bargaining contract's requirement that an employee cross a picket line, the opinion pointedly declared that this Section of the Act on the other hand "clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree" (At p. 80). Here, the contracting parties **did** so agree. Petitioners' Union—their duly selected bargaining agent—and petitioners' employers, empowered by the Federal Act to do so, have agreed that petitioners shall not be required to cross the lawful, peaceful, picket line that is involved. Petitioners' unwillingness to cross the picket line is thus both an expression of the individual rights under the Act and the end result of their collective action embodied in their collective bargaining contract.

In effect, however, the Tennessee Court, applying a policy of Tennessee, has set that contract aside. Petitioners submit that the State court was as powerless to set aside that contract—as it was to set aside the enabling Federal statute by which the contract was authorized and given legal capacity. The doctrine of pre-emption does not

merely protect in abstract the rights provided by the Act. It also realistically protects contractual expression of those Federally protected rights.

5. In addition to the above important questions of the construction of the Act, there remains another related reason for reviewing the Tennessee Court's decision as one rendered without jurisdiction. The decision runs afoul of a second, pre-emptive, federal, regulatory statute. Petitioners' employers operate under the jurisdiction of the Interstate Commerce Commission. Their duties to serve respondent without discrimination are dealt with in the Federal Act which the Commission administers. In attempting to define and enforce such duties under the law of Tennessee, the decision below has thus also invaded the exclusive primary jurisdiction of the Interstate Commerce Commission. The Interstate Commerce Act embodies a comprehensive Federal program regulating, defining and enforcing, among other things, the common carrier duties of interstate motor carriers such as petitioners' employers.[10] See, 49 U. S. C. 316 (b) and 322 (b). Those federal remedies are exclusive.

Second:

BRATTON, et al., Petitioners,

v.

ALADDIN INDUSTRIES, INC.

STATEMENT.

Petitioners are Local 327, the Local's president, and thirteen additional individual truck drivers who are members of Local 327 and employed by interstate carriers that

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[10] See, Report and Order recommended by examiner, *Galveston Truck Line Corp. v. ADA Motor Lines, Inc., et al.*, I. C. C, No. M C 1922, April 18, 1957, 39 LRR 483.

serve Radio's and Industries' common business premises. Like Radio, Industries is an interstate industry (RA. 12; RA. 660). Many of the other facts set out above have application here. As has been stated, Industries' employees were not on strike. However, on February 8, 1955, Industries filed its bill for complaint against several interstate carriers by truck, in the Chancery Court of Davidson County, Tennessee. The bill, similar in form to that filed by Radio, alleged that striking employees of Radio were picketing Industries' operations and that, as a result, employees of the trucking companies were refusing to serve Industries' plant (RA. 11). Relief was sought against the carriers and against their employees as a class. The Chancery Court, on February 10, 1955, entered a temporary injunction ordering the carriers and their employees to render customary service to Industries (RA. 23) extended May 30, 1955 (RA. 61) (App. H).

Service by truck to Industries' operations then continued until about May 17, 1955. On that day, striking members of United Steelworkers Local 5003, employed by Radio, began peacefully to picket Industries (RA. 68, RA. 256, RA. 591). Members of Local 327 respected this picketing, thus reducing truck service to and from Industries. Industries thereafter filed several petitions for contempt against individual truck drivers and their employers, the first three of which were subsequently dismissed by the Chancellor (RA. 108).

On June 1, 1955, Local Union 327, its President Don Vestal, and individual petitioners Clyde Kennedy, Clyde Bowen, L. D. Bennett, Albert Burnett, Joe Heald, and others were cited for violation of the Court's injunction (RA. 63). And, on June 8, 1955, Industries amended its petition for contempt (RA. 82). The amendment alleged, in substance, that on June 1, 1955, Local 327 had itself begun to picket Industries with a Local 327 Teamsters'

picket sign. This picketing was, as is customary in Local 327's organizing campaigns, designed to persuade office personnel of Industries, who have no union, to join that Local (RA. 137, RA. 546). Local 327's picket sign read: "The office employees of this plant do not belong to the Union. We ask the public not to patronize the plant. We invite the office employees of this plant to join the Teamsters' Union" (RA. 475, 464). The sign was readable by truck drivers and others approaching Industries (RA. 471). Industries cited petitioners' Local 327 and its President, Vestal, for having conducted this peaceful picketing on the ground that the above did not constitute a bona fide picket sign and was a violation of the injunction (RA. 83).

On June 8, 1955, Industries further amended its petition for contempt, adding petitioners Fred Johnson and M. M. Bratton, and others (RA. 82). By additional petitions, Industries cited petitioners Jack Shelton, R. C. Working, and Thomas Mallory, on June 16, 1955 (RA. 114); and, on June 20, 1955, cited petitioners R. E. Odom, Floyd Duncan and T. A. Hargis (RA. 130).

The same collective bargaining contract of Local 327 described in the statement of the **Radio** case also applied to all the individual truck drivers cited by Industries for contempt (RA. 65, RA. 116, RA. 551, RA. 665, Complainant's Ex. 1, RA. 510). Industries has at no time claimed that the picketing of its operations was violent or involved probable breaches of the peace. On the contrary, Industries has insisted (and the Chancellor has in effect found) that the picketing was peaceful and that, had they so desired, the individual truck drivers could have safely and readily crossed the picket line (RA. 676).

Pleas in abatement were duly filed by petitioners alleging:

"This Honorable Court is without jurisdiction of the subject matter of this suit, or these respondents, jurisdiction being exclusively in the National Labor Relations Board, pursuant to the Acts of Congress, particularly the National Labor Relations Act, and the Labor Management Act, 29 U. S. C. A. 141, et seq." (RA. 100, RA. 102, RA. 148, RA. 160, RA. 170, RA. 233).

These pleas in abatement were overruled in open court (RA. 277).[11]

By decree of July 29, 1955, the Chancery Court of Davidson County, Tennessee, found petitioners Kennedy, Bowen, Bennett, Burnett, Heald, Bratton, and Johnson, were guilty of violating the court's injunction by refusing to cross the picket line at Industries prior to June 1, 1955; that petitioners Shelton, Duncan, Mallory, Working, Odom and Hargis were guilty of violating the injunction by refusing to cross the picket line after June 1, 1955, when the Teamsters began to picket; and that petitioners Vestal and Local Union 327 were in contempt of the court's injunction by [illegible]ng "caused pickets to be placed at the premises of the complainant company on the 1st day of June, 1955; . . . said picketing was neither bona fide nor for a lawful purpose but was done solely for the purpose of attempting to prevent the complainant from receiving common carrier service which the Court had decreed it was entitled to receive." Each of the individual petitioners was ordered imprisoned for a period of three days. As its punishment, Local Union 327 was taxed with all costs incurred in the contempt proceedings (RA. 210-215).

Petitioners' motions for new trial (RA. 241, RA. 243, RA. 688) took identical grounds, i. e., that:

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[11] See also, reference to the overruling of all pleas in abatement in decree of July 29, 1955, at RA. 211.

"This Honorable Court is without jurisdiction of the subject matter of this suit, jurisdiction being exclusively in the National Labor Relations Board pursuant to the Acts of Congress, and particularly 29 U. S. C. A. 141 et seq.

II.

"This Honorable Court is without jurisdiction of the subject matter of this suit, said suit involving a labor dispute and unfair labor practices and jurisdiction being exclusively in the National Labor Relations Board, pursuant to the Acts of Congress, and particularly 29 U. S. C. A. 141 et seq.

III.

"This Honorable Court is without jurisdiction of the subject matter of this suit and the injunction issued by this Court requiring common carriers to perform certain services being void and of no force and effect, jurisdiction of such matters being exclusively in the Interstate Commerce Commission and/or the Tennessee Public Service Commission."[12]

As in the **Radio** case, certiorari was unsuccessfully sought in the Court of Appeals of Tennessee (RA. 5, 278).

Petitioners Vestal and Local 327 appealed to the Court of Appeals stating the question on that appeal there as follows:

"Does the State Court having jurisdiction to issue a mandatory injunction requiring employees of common carriers engaged in interstate commerce to cross

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[12] The Chancery Court's lack of jurisdiction over matters subject to the regulations of the ICC was also raised by Answer (RA. 178). And Local 327's pleadings in answer claimed, in addition to Congressional pre-emption of the industrial relations involved, Constitutional protection of the right to engage in peaceful picketing as an exercise of free speech (RA. 133). Cf. *Thornhill v. State of Alabama*, 310 U. S. 88.

a bona fide picket line to pick up and deliver goods being manufactured by a corporation engaged in interstate commerce where the employees of the common carrier do not belong to the same union as the pickets across whose lines the State Court orders the employees of the common carriers to cross for the purpose of picking up and delivering materials for shipment in interstate commerce? (The theory of complainants below is that the State Court does has jurisdiction.)

"Or, has the State Court been ousted of jurisdiction to issue an injunction in such case due to the field having been pre-empted by acts of Congress, particularly the National Labor Relations Act, and the Labor Management Act, 29 U. S. C. A., 141, et seq. (The theory of appellants is that this field has been pre-empted by Congress.)

"There are other questions presented in this appeal, but appellants believe the answer to the foregoing query is determinative of the issues in this case" (RA. 697).

Their appeal also preserved the contention that the Chancery Court's order had deprived them of their right to freedom of speech granted by the Constitution of the United States (RA. 705).

The other thirteen individual petitioners also duly took an appeal to the Court of Appeals of Tennessee by pleadings substantially identical to those set out above in the **Radio** case (RA. 706).

On July 27, 1956, the Court of Appeals affirmed (RA. 725; App. B).

The Supreme Court of Tennessee denied certiorari, without opinion (RA. 777), simultaneously with its similar action taken in the **Radio** case. A stay of proceedings

was entered, to permit application for certiorari to this Court, identical with that entered in the **Radio** case (RA. 778).

THE REASONS FOR GRANTING THE WRIT.

All of the reasons assigned above for the granting of the writ in the **Radio** case apply with equal vigor here.

In addition to the indirect action taken in the **Radio** case, the chancellor here has proceeded directly against the Union petitioner as such, and has prohibited peaceful picketing on pain of contempt.

His action is in direct conflict with the governing principle that peaceful picketing of Industries' interstate industry need not square with Tennessee's law, in order to be valid. **United Mine Workers v. Arkansas Oak Flooring Co.**, supra, at 75. (See part "3" above.)

Local 327 placed peaceful organizational pickets before Industries' premises. The Tennessee Court found the picket line was not bona fide, by reference to considerations appealing to that Court's judgment. However, it is now settled that, in such circumstances, peaceful, organizational picketing of an industry affecting commerce is conduct to which the National Act applies pre-emptively. Not only do some aspects of that peaceful picketing as such enjoy Federal Constitutional sanction (**Thornhill v. Alabama**, supra, but in order for that picketing to be relieved against at all, the primary administrative authority of the National Labor Relations Board must first be invoked.

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor Management Relations Act is not to condemn all picketing but only that ascertained

by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits."

Garner et al. v. Teamsters Local Union 776, supra, at 499-500.

Garner cannot be avoided by the device of grounding the state court injunction nominally on Tennessee non-labor policies. **Weber v. Anheuser-Busch, Inc.**, supra; **American Tobacco Co., Inc., v. General Drivers**, supra. A preemption applies even if the conduct complained of does not represent an unfair labor practice under the Act. Id.

Therefore, it was not for the State Chancellor to apply his parochial standards of good faith to peaceful organizational picketing directed at an admittedly interstate industry. Only the uniform policies of the Federal Act, as applied by the Board pursuant to its difficult and delicate responsibility, can measure that subtle quality of allowable peaceful picketing in interstate industries. **Weber v. Anheuser-Busch, Inc.** supra; cf. **NLRB v. Truck Drivers Local Union**, supra, at ....; 648.

This is true, even if the peaceful picketing is pursued by a union that does not represent Industries' employees. **Meatcutters v. Fairlawn Meats, Inc.**, supra. "Peaceful stranger picketing by a labor organization in the course of a labor dispute is therefore an activity subject to an injunction only through the procedures authorized in the Act, and if not so condemned, is protected by Congress against injunctive prohibition arising outside the Act." **Aetna Freight Lines v. Clayton** (CCA—2), 228 F. (2d) 384, 388, cert. den. 351 U. S. 950.

In summary, the Tennessee Court was without jurisdiction to proceed against, or to punish petitioners for engaging in or respecting, peaceful picketing of Industries' interstate operations.

CONCLUSION.

It is respectfully submitted that the petition for writs of certiorari should be granted.

By .....

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Dated: May ...., 1957.

Certificate of Service.

I, Albert Williams, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of the United States hereby certify that a copy of the foregoing Petition for Certiorari and Appendices was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33 by depositing same in the U. S. Post Office at Nashville, Tennessee, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

Albert Williams

Dated: May 3, 1957

APPENDIX A.

ALADDIN RADIO INDUSTRIES, INC.

v.

ADKINS TRANSFER CO., INC., et al.

} Davidson Equity.

Court of Appeals of Tennessee,
Middle Section, at Nashville.

Appeal From the Chancery Court of Davidson County.

Honorable William J. Wade, Chancellor.

Filed July 27, 1956.

Waller, Davis & Lansden, All of Nashville, for Aladdin Radio Industries, Inc.

Cooper, Mitch & Black, of Birmingham, and Williams, Harwell, Howser & Thomas, of Nashville, for Appellant Truck Drivers.

Affirmed and remanded.

S. L. FELTS,
Judge.

ALADDIN RADIO INDUSTRIES, INC.

v.

ADKINS TRANSFER CO., INC., et al.

} Davidson Equity.

OPINION.

Aladdin Radio Industries, Inc., was a subsidiary corporation of Aladdin Industries, Inc. The latter owned a manufacturing plant which was located on the Murfreesboro Highway just outside the city limits of Nashville,

and a part of which was leased to and occupied by Aladdin Radio Industries, Inc., the other part of the plant being occupied by Aladdin Industries, Inc., both of them using the same entrances to the plant. Each had separate employees represented by different labor unions. The representative and collective bargaining agent of the employees of Aladdin Radio Industries, Inc., was Local Union No. 5003 of the United Steelworkers of America.

The collective bargaining contract between Local 5003 and Aladdin Radio Industries, Inc., covering its employees, expired in the latter part of January, 1955, the employees went on strike, and Local 5003 placed pickets at the entrances to the plant and has maintained them there ever since. The employees of Aladdin Industries, Inc., however, did not strike but continued to work, and have continued to go back and forth across the other union's picket lines.

Aladdin Radio Industries, Inc., shipped large amounts of supplies and materials to the plant and large quantities of manufactured products from the plant. Such shipments were both intra- and interstate and were customarily carried by common carriers of freight by motor truck, which regularly maintained pickup and delivery service for Aladdin Radio Industries, Inc., at the plant. Many of these common carriers ceased to render the service to Aladdin Radio Industries, Inc., at the plant because their truck drivers, members of another union, refused to cross Local 5003's picket line.

On March 23, 1955, Aladdin Radio Industries, Inc., filed the original bill in this cause against 11 of these carriers, seeking an injunction to compel them to continue rendering to complainant their customary carrier service, which they had stopped because their truck drivers, members of Local Union No. 327 of Teamsters, Chauffeurs, Helpers, and Taxicab Drivers, refused to cross the other union's (Local 5003's) picket line at the plant.

Upon notice and after a hearing, the Chancellor, on March 29, entered an order directing the issuance of an injunction, enjoining defendants "and their officers, agents, employees, and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service . . ." Accordingly, the injunction issued and was served upon the defendants.

On April 8, 1955, complainant, Aladdin Radio Industries, Inc., filed a petition for attachment for contempt against five named truck drivers of defendant carriers: Marvin Caylor, Douglas McCrary, Luther Caroll, Dan Pedigo, and L. H. Bradley. The petition alleged a specific instance in which each of said drivers had been ordered by the carrier to deliver a shipment to complainant, and alleged that the driver had refused to deliver such shipment and was guilty of contempt for willful disobedience of the injunction.

On April 15, 1955, respondent truck drivers filed a joint answer which was in the nature of a plea of confession and avoidance. Each truck driver confessed he had refused to deliver the shipment, as alleged, and averred in avoidance that the reason for his refusal was that he feared that if he crossed the picket line to make such delivery, "bodily harm would come to him or his family." But there was no averment of any fact to show any danger or probability of any such harm.

On the hearing the matter was submitted to the Chancellor upon the petition and the answer thereto, without any offer of evidence. The Chancellor held that "the respondents in their said answer admitted the charges against them as set forth in the petition and failed to show to the Court any just cause or excuse for violating the injunction", and that each was guilty of contempt as alleged in the petition. He accordingly fined each of them $50.00 and the costs.

Each of them prayed and were granted an appeal to the Supreme Court. That Court transferred the case to this Court. Appellants contend: (1) that the court below had no jurisdiction of the subject matter of this suit, because it involved a labor dispute the exclusive jurisdiction of which was in the National Labor Relations Board; and (2) that, assuming the court had jurisdiction, it erred in finding them guilty of contempt upon the pleadings and without the introduction of any evidence to support the charges.

(1) This is a companion case to the case of Aladdin Industries, Inc., v. Associated Transport, Inc., et al., Davidson Equity, opinion filed July 27, 1956. The jurisdictional facts in the present case are not materially different from those in that case, and what was there said will suffice for a discussion of the question of jurisdiction here. Our conclusion is that this is not a labor dispute but a controversy between a shipper and defaulting carriers and that the court below had jurisdiction of the subject matter and of the parties.

(2) We think the Chancellor correctly held that each truck driver's response in the answer amounted to a confession of the conduct constituting the contempt charged, without alleging any fact to excuse such conduct; and that he correctly found each of them guilty of the contempt charged. Since they had admitted the acts charged as contempt and sought to set up new matter in avoidance, the burden was upon them to aver and prove matter sufficient to constitute a defense.

"Where the material allegations of a bill or petition are denied by the answer, the burden of proof rests upon the complainant; but where the plea, or answer, expressly or constructively confesses the material allegations of the bill, and sets up new matters in avoidance of the bill, the burden of proof rests upon the party who maintains the

affirmative of the issue . . . " 1 Gibson's Suits in Chancery (5th ed.), sec. 451.

As stated, each truck driver admitted that he had refused to deliver the shipment, as directed by his employer, and averred that the reason for his refusal was that he feared bodily harm to himself or his family if he crossed the other union's picket line to deliver the shipment, as required by the injunction. But no fact or circumstance was alleged or proved to show any ground for such fear or any danger or probability of any harm to respondents.

All of the assignments of error are overruled and the decree of the Chancellor is affirmed. The cause will be remanded to the Chancery Court for further proceedings not inconsistent with this opinion. The costs of the appeal are adjudged against appellants and the surety on their appeal bond.

S. L. FELTS,
Judge.

Hickerson, J., concurs.

Shriver, J., concurs.

APPENDIX B.

ALADDIN INDUSTRIES, INC.

v.

ASSOCIATED TRANSPORT, INC. et al.

Davidson Equity.

Court of Appeals of Tennessee,
Middle Section, at Nashville.

Appeal from the Chancery Court of Davidson County.

Honorable William J. Wade, Chancellor.

Filed July 27, 1956.

Waller, Davis & Lansden, All of Nashville, for Aladdin Industries, Inc.

Cooper, Mitch & Black, of Birmingham, and Williams, Harwell, Howser & Thomas, of Nashville, for Appellant Truck Drivers.

Moore, Crownover, Branstetter, Folk & Fisher, of Nashville, for Appellants Local 327 and Don Vestal.

Affirmed and Remanded.

S. L. FELTS,
Judge.

ALADDIN INDUSTRIES, INC.

v.

ASSOCIATED TRANSPORT, INC. et al.

Davidson Equity.

OPINION.

The principal case is an injunction suit by a shipper against 14 common carriers to compel them to continue rendering complainant their customary service, which

they had stopped because their truck drivers refused to cross another union's picket line at complainant's plant. After a hearing, the Chancellor granted a preliminary injunction, as prayed, which, following the practice in equity, ran against defendants "and their officers, agents, and employees." That case is still pending below.

The phase of it now before us is an ancillary proceeding against some of these employees, their union, and its officers, for contempt for violating the injunction. After a trial, the Chancellor sustained charges of contempt against 13 of these truck drivers and their union, Local Union No. 327 of Teamsters, Chauffeurs, Helpers, and Taxicab Drivers (hereinafter called Local 327) and its president, Don Vestal; and entered a decree adjudging them guilty of contempt, sentencing each of the men to three days in jail, and taxing Local 327 with all the costs.

They appealed and contend that the Chancery Court had no jurisdiction of the case, and no power to grant the injunction or to punish them for disobeying it; that the injunction was void, they had a right so to treat it, and could not be held in contempt for doing so. Churchwell v. Callens, 36 Tenn. App. 119, 252 S. W. (2d) 131; United States v. United Mine Workers of America, 330 U. S. 258-385, 91 L. ed. 884-961.

They urge that the court had no jurisdiction of the subject matter, because it involved a "labor dispute" within the exclusive jurisdiction of the National Labor Relations Board, or a transportation matter within the exclusive jurisdiction of the Interstate Commerce Commission or the Tennessee Public Service Commission. They further contend that the Chancellor's decree deprived them of their right to freedom of speech under the Constitutions of the United States and of Tennessee, and that the evidence does not support the decree.

Complainant, Aladdin Industries, Inc., has a plant just outside the city limits of Nashville where it manufactures goods. It ships large amounts of materials to the plant and large quantities of manufactured products from the plant. Such shipments are both intra- and interstate, and have been customarily carried by defendant carriers, which maintain pickup and delivery service at the plant. Complainant is largely dependent on such service for continuance of its business.

Defendants are corporations and common carriers of freight by motor truck, operating under certificates of convenience and necessity from the Interstate Commerce Commission and from the Tennessee Public Service Commission. Their truck drivers and helpers are all members of Local 327, with which defendants have a collective bargaining contract which covers these employees and which contains the following provision:

> "It shall not be in violation of this contract if any employee or employees refuse to go through the picket line of a Union or refuse to handle 'unfair goods.' Nor shall the exercise of any rights permitted by law be violation of this contract. The Union agrees that in the event the Employer becomes involved in a controversy with any other Union, the Union will do all in its power to help effect a fair settlement" (Art. XI, p. 10, Ex. 1, Gilliam, tr. end Vol. 1).

Aladdin Radio Industries, Inc., is another and different corporation from complainant, engaged in a different business, but is an affiliate of complainant and leases and occupies space in complainant's plant, both of them using the same entrances to the plant. Each of them, however, has its own separate employees, represented by different unions. The representative and collective bargaining agent of employees of the affiliate is Local Union No. 5003 of the United Steelworkers of America, while such agent for

complainant's employees is Local Union No. 4802 of the United Steelworkers.

The collective bargaining contract between Local 5003 and Aladdin Radio Industries, Inc., covering its employees expired January 24, 1955, the employees went on strike next day, and Local 5003 placed pickets at the entrances to complainant's plant and has maintained them ever since. Complainant's employees, however, did not strike but continued to work, and have continued to pass back and forth across the other union's picket lines.

Likewise, defendant carriers continued their customary pickup and delivery service at the plant, and their truck drivers and freight-handling employees, members of Local 327, continued to cross the other union's picket lines at complainant's plant without objection. But early in February, 1955, a number of defendant carriers ceased to render service at complainant's plant, and refused to permit complainant to come to their freight yards and pick up freight consigned to it, because their employees had become unwilling to cross Local 5003's picket line at its plant or to handle freight for it.

On February 8, 1955, complainant filed its bill against seven of the carriers which were refusing to handle freight for it. On February 11, 1955, as before stated, the Chancellor granted a temporary injunction, as prayed, enjoining defendants "and their officers, agents, employees," and "confederates from failing and refusing to provide customary service to complainant, under the legally established rates and rules applicable to such service, as the same had been rendered before February 3, 1955."

When this injunction was served on defendants and their employees were notified of it, they began complying with it, the carriers resumed their customary service to complainant, carrying shipments to and from its plant, their employees crossing 5003's picket lines without trouble.

They continued to furnish the service from February 11, when the injunction was served, until May 17, 1955, when the carriers again quit rendering the service, because their employees now refused to cross the picket lines.

Complainant then began filing petitions against the carriers, their employees, Local 327, its officers, and Local 5003 and its officers, for contempt for disobeying the injunction, alleging specific instances of such disobedience and of refusals to make requested shipments or deliveries of freight for complainant. These refusals persisted, and there were six successive contempt petitions filed. We need not detail the contents of each of them.

The main charge in them was that Local 327, its officers, Local 5003, and its officers, entered into a conspiracy to violate the injunction and to induce the truck drivers to violate it by refusing to cross the picket line to render the service at the plant; that on June 1, 1955, Local 327 placed persons at the plant with a large sign: "TEAMSTERS LOCAL UNION 327," with a statement beneath in small type: "We invite the office employees of this plant to join the Teamsters Union"; that Local 327 had no authority to organize complainant's office workers; and that this was not a bona fide picket sign but a subterfuge to induce Local 327's members, the truck drivers, to continue disobeying the injunction.

It was further charged that Local 327 continued to keep these persons with this sign at the plant, continued to maintain this subterfuge; that these persons were stopping the truck drivers and threatening them with harm or disciplinary action if they drove defendant carrier's trucks across the picket line into the plant to deliver or pick up freight for complainant; and that they were persisting in willfully disobeying the court's injunction.

These two unions, their officers, and many of the truck drivers filed pleas denying that the court had jurisdiction

of the subject matter of the suit and averring that exclusive jurisdiction of it was in the National Labor Relations Board. A number of these truck drivers brought this question to this Court by petition for certiorari and supersedeas, which was denied in an opinion filed July 22, 1955, unreported.

These pleas were overruled by the Chancellor and answers were filed denying the charges. Local 327 admitted that it had placed the persons with the sign at the plant, but averred that this was a picket line set up by it in good faith to organize complainant's office workers. Appellant truck drivers admitted that they had refused to cross the picket line or render the service, but averred that the reason for their refusals was their fear of violence to themselves or their families if they crossed the picket line.

Meanwhile, there were a number of hearings before the Chancellor upon the question of his jurisdiction and upon some of the contempt petitions. He concluded he had jurisdiction and on June 13, 1955, entered an order dismissing the first three contempt petitions and stating that the injunction theretofore issued would be strictly enforced even though it required employees of the carriers to cross a picket line at complainant's plant, but that no bona fide member of Local 5003 would be required to cross its own picket line at the plant.

Thereafter, there were further hearings before the Chancellor upon the other contempt petitions. He found that the carriers had in each instance dispatched their truck drivers to render the service, and had done their best to comply with the injunction; and he dismissed the petitions as to them. He also dismissed the petitions for want of proof as to all the other respondents except appellants. He found appellants guilty and decreed that they be punished as above stated.

The defense urged for them is twofold: (1) that the court had no jurisdiction of the case, the injunction was void, and they were not bound to obey it; but (2) that there is no sufficient proof that they did disobey it or were guilty of the contempt charged. They contend that the court had no jurisdiction of the subject matter of this suit, because it involved a "labor dispute" within the exclusive jurisdiction of the National Labor Relations Board, or an administrative matter within the exclusive jurisdiction of the Interstate Commerce Commission or of the Tennessee Public Service Commission.

The subject matter of a suit is, of course, the matter presented by the pleadings—the bill and the pleas and answers thereto. The matter thus presented in this case is a controversy between a shipper and defaulting carriers. It does not involve any employer-employee relation or any labor dispute between the parties to the suit.

There was no labor dispute between complainant and its employees. While there was a labor dispute between complainant's affiliate and the latter's employees, and while they were on strike and were picketing the plant, this suit did not involve that dispute or seek to interfere with the strike or to stop the picketing. The only conduct complained of by the suit is the conduct of the carriers in not rendering their service, and the conduct of appellants in interfering to prevent such service.

That this conduct is unlawful cannot be denied. It violates both the common law and the statutes of Tennessee. At common law the calling of a common carrier is a public trust. The carrier and its employees owe a duty to serve all shippers alike and to receive, carry and deliver whatever kind of goods it holds itself out to carry, at the applicable rates; and our statutes declare this duty and make a violation of it a misdemeanor. TCA 65-422, 65-512, 65-514, 65-1523, 65-1524.

Under the general rule of equity, and also under our statute (TCA 65-1523, 65-1524), a shipper is entitled to an injunction to compel a common carrier to render service and to restrain other persons from interfering with the rendering of such service. Gibson's Suits in Chancery (4th ed.), sec. 804; Hogan v. Nashville Interurban Railway Co., 131 Tenn. 244, 174 S. W. 1118, LRA 1915E 788, Ann. Cas. 1916C, 1162; Memphis News Publishing Co. v. Southern Ry. Co., 110 Tenn. 684, 75 S. W. 941, 63 LRA 150.

This is also the general rule of equity in state and federal courts. A shipper is entitled to an injunction to require the carrier to perform its duty of carriage, and the injunction against the carrier also runs against his agents and employees, as a matter of course and without their being made parties to the suit. Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730, 742, 19 LRA 387, 393; Montgomery Ward & Co. v. Northern Pacific Terminal Co. (1953), 128 F. Supp. 475-519, same, 128 F. Supp. 520-527; Burlington Transportation Co. v. Hathway, 234 Iowa 135, 12 N. W. (2d) 167, 149 ALR 1238.

> "An injunction not only binds parties defendant but also those identified with them in interest or subject to their control, and may issue against and be binding on the agents and employees of a party without the agents and representatives being made parties to the suit. In re Lennon, 166 U. S. 548, 17 S. Ct. 658, 41 L. Ed. 110; Chase National Bank v. Norwalk, 291 U. S. 431, 54 S. Ct. 475, 78 L. Ed. 894; and Rule 65 (d), Federal Rules of Civil Procedure, 28 U. S. C. A." Baltimore & O. R. Co. v. Chicago River & Indiana R. Co., 170 F. (2d) 654, 659, Cert. denied 336 U. S. 944, 93 L. ed. 1101.

At this point we refer to appellants' claim that the subject matter of this suit is within the exclusive jurisdiction of the Interstate Commerce Commission or the Ten-

nessee Public Service Commission. We find no merit in it. The subject matter of this suit does not involve the reasonableness of any rate, rule, regulation, or any of the other administrative matters exclusive jurisdiction of which is in the Interstate Commerce Commission in transportation involving interstate commerce, or in the Tennessee Public Service Commission in local transportation.

So far as local transportation is concerned, our statute expressly provides that "any interested party in his or its own name, is given the power and right by bill of complaint in any chancery court having jurisdiction of the parties, to seek injunctive relief, prohibitory or mandatory, or both, to compel" a carrier to comply with its duty of carriage. T. C. A., section 65-1523.

In cases of transportation, in or affecting interstate commerce, state courts have concurrent jurisdiction with federal courts to grant shippers injunctive relief against defaulting carriers; and such jurisdiction was not superseded by the Interstate Commerce Act and its amendments. 49 U. S. C. A., sec. 22; Pennsylvania Railroad Co. v. Sonman Shaft Coal Co., 242 U. S. 120, 124, 61 L. ed. 188; Montgomery Ward & Co. v. Northern Pacific Terminal Co., 128 F. Supp. 475, 494-495; Peoria & P. U. R. Co. v. United States, 263 U. S. 528, 535, 68 L. ed. 427, 431, and cases there cited in footnote 8; Central New England R. Co. v. Boston & A. R. Co., 279 U. S. 416, 420, 73 L. ed. 771, 775.

As an additional ground for their claim that the court had no jurisdiction to grant the injunction, appellants seek to invoke a provision of the tariff filed by defendant carriers with the Interstate Commerce Commission and the Tennessee Public Service Commission, which was as follows:

> "Where strikes, picketing, riots or other labor disturbances, or where conditions of streets, roadways,

alleys, yards or the exterior or interior of premises make it impracticable, unsafe, or impossible to render pick-up and/or delivery service, such service will not be given" (Ex. 1, Worley, tr. Vol. II, pp. 401, 435).

The effect of this is that the carriers may be excused from rendering such service when the conditions mentioned make it "impracticable, unsafe, or impossible" for them to render such service. But the proof shows that no such condition existed here. In each instance the carriers dispatched their trucks and drivers to render the service, and such service was regularly rendered from February 11; when the injunction issued, to May 17, when the drivers quit rendering the service because it involved crossing the other union's picket line, which they refused to do.

The only excuse for not continuing the service was the drivers' refusal to cross the other union's picket line. This tariff provision was for the benefit of the carriers. They did not invoke it, because there was no condition making it applicable. Nor do we think appellants can invoke it. To allow them to do so would be to permit them to set up their own wrong as a ground to defeat the court's jurisdiction.

Appellants' main contention is that the court had no jurisdiction of the subject matter of this suit and no power to issue the injunction, because it involved a labor dispute within the exclusive jurisdiction of the National Labor Relations Board. This question must be determined upon the state of the case at the time the court assumed jurisdiction and issued the injunction. If the court then had jurisdiction, such jurisdiction was not defeated by the subsequent conduct of Local 327 and its officers, in placing their picket sign at the plant, during the contempt proceedings. So we here consider the case apart from that subsequent circumstance, which we hereinafter consider in another connection.

The argument for appellants is that the conduct here enjoined was either a "concerted activity" protected by section 7[1] and section 13[2] of the federal Acts (29 U. S. C. A., sec. 157, 163), or an "unfair labor practice" prohibited by section 8[3] (b) (4) (A) (D); and that in either event the exclusive jurisdiction was in the National Labor Relations Board, and the state court had no power to enjoin such conduct.

Thus by section 7 employees have a right to join or assist labor organizations, to bargain collectively through

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[1] Section 7 is as follows: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . . ."

[2] Section 13 is as follows: "Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

[3] This part of section 8 is as follows: "(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification or the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter;".

their own chosen representatives, to engage in other "concerted activities" for collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities; while section 13 provides that nothing in the Act, except as therein provided, shall be construed to interfere with "the right to strike"; and section 8 (b) outlaws certain kinds of union conduct as "unfair labor practices."

These provisions are cast in terms that are not "self-determining or even easy." The Supreme Court has said: "Congress has not seen fit in either of these acts [Wagner and Taft-Hartley] to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states have traditionally exercised control." International Union (Briggs-Stratton case) v. Wisconsin Employment Relations Board, 336 U. S. 245, 252, 93 L. ed. 651, 662.

The Court has also said that this law "leaves much to the states, though Congress has refrained from telling us how much" (Garner v. Teamsters C. & H. Union, 346 U. S. 485, 488, 98 L. ed. 228, 238); and that "'the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds' . . . What is within exclusive federal authority may first have to be determined by this Court to be so." Amalgamated C. W. of A. v. Richman Bros., 348 U. S. 511, 516, 99 L. ed. 600, 608.

That Court, in numerous cases during the last decade, has been called on to interpret these Acts and to determine their effect in many particular types of conduct, and in so doing has declared certain rules and principles which we think point the way to a proper decision in this case.

First. When such a suit as this is brought in a state court and the court's jurisdiction is denied upon a claim

of exclusive federal jurisdiction, the court must determine the question for itself. It is true it is sometimes said that a state court has no authority to determine such a question but the matter must be determined by the National Labor Relations Board. But it is of the essence of judicial duty that the court must decide the case, including the question of its own jurisdiction. It cannot stop or send the case to the Board; nor will a federal court interfere to forestall the state court's determination. Amalgamated C. W. of A. v. Richman Bros., supra.

Second. Matters of important local concern, such as "labor relations over which the several states have traditionally exercised control," remain within state power unless and until they are pre-empted by Congress, under the Commerce and Supremacy clauses of the federal Constitution; and in such a case the intent of Congress to exclude state power **must be clearly and unmistakably manifested.** Kelly v. Washington, 302 U. S. 1, 9, 82 L. ed. 1-10; International Union v. Wisconsin Employment Relations Board, supra; Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 749, 750, 86 L. ed. 1154, 1164.

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected . . . States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power . . . The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together'" (citing numerous cases), Chief Justice Hughes, Kelley

v. Washington, supra; quoted approvingly, United Constr. W. v. Laburnum Constr. Corp., 347 U. S. 656, 664, 98 L. ed. 1025, 1031, footnote 5.

Third. No inference of an intent of Congress to exclude state power over a given type of conduct arises from the mere fact that Congress has brought such conduct within federal control. To warrant an inference of an intent to exclude state power, Congress must not only have taken over such conduct but must also have provided a remedy for it. In the absence of a federal remedy, the state remains free to apply its own remedy. Allen-Bradley Local v. Wisconsin Employment Relations Board, supra; Internation Union (Briggs-Stratton Case) v. Wisconsin Employment Relations Board, supra; United Constr. W. v. Laburnum Constr. Corp., supra; United Auto. A. & A. v. Wisconsin Employment Relations Board, ... U. S. ..., ... L. ed. ..., decided June 4, 1956.

We come, then, to the question whether the conduct here enjoined is a "concerted activity" under sections 7 and 13 so as to be protected from state power. As before stated, this case does not involve any employer-employee relation or any labor dispute between the parties to the suit. It is a controversy between complainant and the defaulting carriers. The only conduct involved is the refusal of the carriers' truck drivers, members of Local 327, to cross the other union's picket line and render the service.

The right of members of a union to refuse to cross another union's picket line is, of course, not as important as their right to refuse to cross their own picket line. This latter right is no less than part and parcel of the right to strike for a lawful purpose or the right to support a lawful strike. They may exercise this right even though they thereby inflict injury on the other party to the dispute. Their self-interest justifies "concerted activity" which

would be unlawful if done by persons without any unity of interest. Montgomery Ward & Co. v. Northern Pacific Term. Co., supra, 128 F. Supp. 504.

The right to refuse to cross another union's picket line is an important right to Labor, but it is not one of the basic, vital interests of Labor, such as the right of workers to self-organization; their right to collective bargaining by representatives of their own choosing; their right to strike in support of their union demand for higher wages and better hours and working conditions; their right to engage in peaceful picketing to support a lawful strike, all of which rights are protected by section 7.

Since the union conduct here does not involve their right to strike, it would seem not to be within the protection of section 13, and since it does not involve the right to engage in peaceful picketing, or any of the other vital rights of workers, it would seem not to be a "concerted activity" within section 7 so as to be protected from state power. At least we have been able to find no Supreme Court decision holding that the right to refuse to cross another union's picket line is a "concerted activity" protected by section 7.

It appears that the right of union employees to refuse to cross another union's picket line is not a federally protected right but only a matter of contract and the employer and employee are free to contract as they wish about the matter. As we understand, it was so held in National L. R. Bd. v. Rockaway News Supply Co., 345 U. S. 71, 97 L. ed. 832, 31 A. L. R. (2d) 511. It was said:

> "In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein 'shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own em-

ployer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act. . . .' This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary provisions if they consider them appropriate to the particular kind of business involved."

But whatever may be the nature of this right of union men to refuse to cross another union's picket line in general, it is not protected by section 7 when it is used to accomplish an object forbidden by state law. The "concerted activity" protected by section 7 is lawful activity, not activity which violates the state law. Indeed, the more important right to picket or to strike is not beyond state power when exercised in a manner contrary to state law. International Union (Briggs-Stratton Case) v. Wisconsin Employment Relations Board, supra; Allen-Bradley Local v. Wisconsin Employment Relations Board, supra; Gibbney v. Empire Storage and Ice Co., 336 U. S. 490, 93 L. ed. 834; Local Union No. 10 v. Graham, 345 U. S. 192, 97 L. Ed. 946; United Constr. W. v. Laburnum Constr. Corp., supra; Auto Workers v. Wisconsin Employment Relations Board, . . . U. S. . . ., . . . L. ed. . . ., supra.

In the case before us the conduct of the truck drivers, in refusing to cross the other union's picket line, prevented the rendering of the carrier service and was a violation of the law of this state; and under the above authorities, we think such conduct was not a "concerted activity" protected by section, 7, but was unlawful conduct within the power of the state to enjoin.

Appellants rely on the provision of the collective bargaining contract above quoted. That merely said it would

not be a breach of the contract if an employee refused to go through the picket line of a union or to handle "unfair goods." That contract could not bind third persons or affect the rights of the public. Moreover, insofar as it attempted to relieve the carriers and their employees of their duty to the public, the contract would be illegal and void. Memphis News Publishing Co. v. Southern Ry. Co., supra, 110 Tenn. 703-705, 95 S. W. .....

The conduct here enjoined was not, in our opinion, an "unfair labor practice" under section 8 (b) of the federal Act so as to be beyond state power. When this suit was brought and the injunction issued, Local Union No. 327 was not on a strike, not engaged in picketing complainant's plant, and not asserting any of the other basic rights of Labor. The only conduct enjoined was the conduct of the carriers and their truck drivers, members of Local 327, in refusing to render the service, which involved crossing another union's (Local 5003's) picket line, which was being maintained to support a lawful strike by Local 5003.

As we have seen, section 8 (b), making certain union conduct unlawful as "unfair labor practices," contains the proviso: "That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter"; that is, a lawful strike.

Thus it seems clear that this subsection 8 (b), which defines union "unfair labor practices," excepts from such practices the kind of conduct here involved. That is, this proviso expressly declares that the refusal of any person to cross another union's picket line (maintained to support a lawful strike) shall not be unlawful or an unfair

labor practice under section 8 (b). Minneapolis & St. L. Ry. Co. v. Pacific Gamble Robinson Co. (8th Cir., 1954), 215 Fed. (2d) 126, 137.

To support appellants' claim that their conduct here enjoined was unlawful and an "unfair labor practice" under section 8 (b), they rely on these cases: Amalgamated Asso. (Bus Employees) v. Wisconsin Employment Relations Board (1951), 340 U. S. 383, 95 L. ed. 364, 22 A. L. R. (2d) 874; Garner v. Teamsters C. & H. Union (1953), supra; Weber v. Anheuser-Busch (1955), 348 U. S. 468, 99 L. ed. 546; General Drivers Union v. American Tobacco Co., Inc., ... Ky. ... (1954), 264 S. W. (2d) 250, reversed (1955), 348 U. S. 978, 99 L. ed. 762; Local Union No. 25 of Teamsters, etc., v. New York, N. H. & H. R. Co. (1956), .. U. S. .., 100 L. ed. 164.

The first of these cases involved the right to strike under section 7. Employees of two local public utilities (a transit company and a gas company) called strikes to support union demands. Wisconsin had a statute forbidding strikes in public utilities and providing for compulsory arbitration instead. Under this statute the State enjoined these strikes. It was held that the statute was invalid as in conflict with the federal Act, section 7 (29 U. S. C. A., sec. 157), which guarantees public utility employees the right to strike the same as other employees.

In the Garner case the conduct consisted of picketing which constituted an unfair labor practice under the state law and also an "unfair labor practice" under section 8 (b) of the federal Act, which the National Labor Relations Board was empowered to prevent. Since there was a federal remedy for the conduct complained of, it was held that the state could not enjoin such conduct. The principle of that decision was that there could not be two parallel or similar remedies, one federal and the other state, for the same conduct.

In the Webber case there was a strike and picketing by a union, the collective bargaining agent of complainant's employees. Complainant charged the union with an "unfair labor practice" before the Board, which charge was dismissed. In the meantime, complainant sued the union in the state court to enjoin the conduct, alleging it was a secondary boycott in violation of state law and also an "unfair labor practice" under section 8 (b) (4) of the federal Act. It was held that this averment made a case within the exclusive jurisdiction of the Board. The Court said:

> "But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance" (348 U. S. 481, 99 L. ed. 558).

In the General Drivers case, supra, the American Tobacco Company (American) and its subsidiary occupied a plant, both using common entrances. The union, representing the subsidiary's employees, called a strike and began picketing the plant. The American brought suit in the state court, alleging the picketing was a "secondary boycott," and seeking an injunction to stop the picketing and to compel common carrier employees, also members of the union, to cross their own picket line and handle freight for complainant.

The state court found that the American and its subsidiary were one entity, and held that the picketing was "legal" and could not be enjoined, because it was primary and not secondary, as alleged; but that American was enti-

tled to an injunction requiring the common carriers' employees to cross their own picket line placed there by their union to support the legal strike (264 S. W. [2d] 250). The Supreme Court reversed in these words:

> "Per Curiam: The judgment is reversed. Weber v. Anheuser-Busch, Inc., No. 97, October Term, 1954, decided March 28, 1955 [348 U. S. 468, 99 L. ed. 546, 75 S. Ct. 480]. Amalgamated Asso. etc. v. Wisconsin Employment Relations Board, 340 U. S. 383, 95 L. ed. 364, 71 S. Ct. 359, 22 A. L. R. 2d 874." 348 U. S. 928, 99 L. ed. 762.

As stated, the American charged the picketing was a secondary boycott, and thus alleged facts constituting a union "unfair labor practice" under section 8 (b) (4); and insofar as it was sought to enjoin the picketing, it made a case of "unfair labor practice," under the Webber case; and insofar as it was sought to compel the public utility employees to cross their own picket line, it violated their federal right to strike under the Amalgamated Asso. (Bus Employees) case, supra.

In the Teamsters case, supra, the railroad sued in the state court to enjoin the union from picketing its premises, alleging the union conduct was a "secondary boycott" in violation of state law and of section 8 (b) (4) (A) of the federal Acts. The state court enjoined the picketing. The Supreme Court reversed, holding that the railroad itself had alleged a case of "unfair labor practice" under section 8 (b) (4) (A), or if the union conduct was not prohibited by section 8 (b), it might be protected by section 7; and the Court quoted the excerpt above quoted from the Weber case.

The principle of the Garner case, that there could not be parallel state and federal remedies for the same conduct, was materially modified in United Auto. A. & A. v.

Wisconsin Employment Relations Board, supra, .. U. S. .., .. L. ed. .., decided June 4, 1956, which held that a state court could, under its own labor legislation, enjoin picketing in violation of state law even though it was also an "unfair labor practice" under section 8 (b) (1) of the federal Acts. That is, there may be two similar remedies, one federal and the other state, for the same conduct in the circumstances.

So we think all of the above cases relied on by appellants differ decisively from this case. In each of those cases the conduct was picketing which was either an "unfair labor practice" prohibited by section 8 (b) or a "concerted activity" protected by section 7 and section 13. But in this case there was no picketing by appellants or their union, no "concerted activity" protected by sections 7 and 13, but a mere refusal by them to cross, not their own, but another union's picket line (maintained to support a lawful strike), which refusal, by the proviso of section 8 (b), is declared not to be unlawful or an "unfair labor practice" under section 8 (b).

It seems clear that the conduct here enjoined was neith protected as a "concerted activity under sections 7 and 13 nor prohibited as an "unfair labor practice" under section 8 (b). Moreover, it does not appear that the federal Acts afford any remedy for this conduct, or that the National Labor Relations Board has any power to grant any relief to this shipper against these defaulting carriers and the unlawful conduct of appellants.

The decisions of the Supreme Court support the proposition that, in order to exclude state power over a given type of conduct, it must appear not only that Congress intended to bring such conduct within federal control, but also that the federal Acts afford a remedy for harm caused by such conduct. The lack of the federal remedy has been emphasized as a reason for holding that the conduct has

not been withdrawn from state power but that the state is still free to apply its own remedy.

In International Union, U. A. W., v. Wisconsin Employment Relations Board, supra, 336 U. S. 254, 93 L. ed. 653, it was said:

> "There is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question. This conduct is governable by the state or it is entirely ungoverned."

In the Garner case, supra, 346 U. S. 488, 98 L. ed. 238, the Court said:

> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. International Union, U. A. W. v. Wisconsin Employment Relations Board, 336 U. S. 245, 254, 93 L. ed. 651, 663, 69 S. Ct. 516."

In United Constr. W. v. Laburnum Constr. Corp., supra, a state court was allowed to furnish its remedy by way of damages for tortious conduct which was a union "unfair labor practice" under section 8 (b). That is, the fact that there was a federal remedy by which the federal Board could have stopped the conduct did not prevent the state from affording its remedy by way of damages. In that case the Court said:

> "In the Garner Case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither provided nor suggested any substitute for the

traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct."

* * * * * * * *

"To the extent that Congress prescribed preventive procedure against unfair labor practices, that case [Garner case] recognized that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the Garner Case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived" (347 U. S. 665, 98 L. ed. 1031, 1032).

So we conclude that the conduct here enjoined was not pre-empted by Congress and withdrawn from state power but that, since there appears to be no federal remedy for such conduct, the State could afford its own remedy and the Chancery Court had jurisdiction of the subject matter of this suit.

But regardless of whether the injunction was irregular or erroneous, while it remained in force appellants were bound to obey it. In Nashville Corp. v. U. Steelworkers, Etc., 187 Tenn. 444, 450, 215 S. W. (2d) 818, ..., the Court said:

"'The mandates of a Court of Chancery must in all cases be obeyed, according to the spirit of the de-

cree, promptly, faithfully and without question, or evasion. The party, upon whom the order or command of the court operates, is not allowed to speculate upon the equity of the bill, or the legality or regularity of the order or decree, or of the writ issued thereon; but his simple duty is to obey; and when he disobeys it is a duty the court owes to itself and to the public to punish him at once' ".

As to appellant truck drivers, the answers of each was in the nature of a plea of confession and avoidance. Each confessed he had refused to obey the injunction but averred in avoidance that the reason for his refusal was that he feared violence or physical harm to himself or his family if he crossed the picket line to render the service, as required by the injunction.

The Chancellor rejected this defense and found that they deliberately disobeyed the injunction. We think the evidence abundantly sustains this finding. There was no showing of any danger of violence to them or their families if they crossed the picket line. They had been crossing it from February 11 till May 17, without violence; and there was no proof that any violence would have likely resulted to them or their families if they had continued to cross it after May 17.

Likewise, the answers of Local 327 and of its president, Don Vestal, were in the nature of pleas of confession and avoidance, confessing that each knew the terms of the injunction, having received a copy of it by registered mail May 18, and that on June 1, Local 327 placed at the plant a picket with its sign, but averring in avoidance that the picket was put there in good faith for the purpose of organizing complainant's office workers.

The proof showed without dispute that on June 1, Local 327 placed at the plant its picket with a placard with its

name painted thereon in large letters visible for 50 feet or more, followed by the statement, above quoted, in type so small that it could not be seen or read while the placard was being carried by the picket. This picket was kept there at the entrance of the plant from June 1 to June 17, and the man doing the picketing was paid for it by Don Vestal out of Local 327's petty cash fund.

The Chancellor found that "said picketing was neither bona fide nor for a lawful purpose but was done solely for the purpose of attempting to prevent the complainant from receiving common carrier service which the Court had decreed it was entitled to receive;" that defendant Vestal was in charge of defendant Local 327 and paid for the picketing out of its petty cash fund and that "such conduct on the part of said defendants was a willful interference with the lawful processes of the court and contemptuous of it."

There were a number of circumstances against the bona fides of the picketing. The injunction had been issued requiring the truck drivers to continue rendering the service, which involved their crossing the other union's (Local 5003's) picket line, and on May 17, they had begun refusing to do that, and petitions were being filed against them for contempt for their refusal. On May 27, at a hearing on the question of jurisdiction, it appeared that defendants relied on the General Drivers case (decided April 4, 1955), supra, which held that the carriers' truck drivers could not be required to cross **their own union's** picket line.

It appears that during the argument the Chancellor pointed out that that case differed from this case, and stated that he would not require a union man to cross his own union's picket line. Three days later, the carriers' truck drivers' own union, Local 327, all of them then under the injunction, set up its own picket line at the entrance to the plant alongside the picket line of the other

union, Local 5003. These circumstances naturally raise the question: Why was that action taken at that particular time?

Certain it is that Local 327 and its president, Don Vestal, understood and intended that their members, the truck drivers, would see Local 327's sign there and would understand that it was itself carrying on the picketing; and that if these drivers were unwilling to cross another union's picket line, they would be even more unwilling to cross their own union's picket line; and that this would either thwart the purpose of the court's injunction, or greatly multiply the difficulties of enforcing it.

It does not appear that Local 327 had ever communicated with complainant or with any of its office workers, or had expressed to any of them any desire or purpose to organize them or have any of them join Local 327; and the statement on the placard to that effect in the small type was not calculated to impart such information to them or to any member of the public. Also, it was shown that Mr. Vestal was in charge of Local 327, and if it had a good faith purpose to organize complainant's office workers, he doubtless would have so testified. But he did not take the witness stand.

On appeal from a conviction for contempt for violation of an injunction, an appellant, who seeks a reversal for insufficiency of the evidence, has the burden of convincing the appellate court that the evidence preponderates against the finding and judgment of the court below. Nashville Corp. v. U. Steelworkers, Etc., supra; State ex rel. Anderson v. Daugherty, 137 Tenn. 125, 191 S. W. 974; O'Brien v. State ex rel. Bibb, 26 Tenn. 270, 170 S. W. (2d) 931.

We think that appellants failed to carry this burden, and that the evidence does not preponderate against the finding and decree of the Chancellor, but fully sustains such finding and decree.

Appellants' Local 327 and Vestal insist that the Chancellor's decree deprived them of their unconstitutional right of free speech. They were not peacefully picketing for a lawful purpose, but for a purpose in violation of the law of Tennessee. The constitutional guaranty of free speech does not extend to such unlawful picketing. Nashville Corp. v. Steelworkers, Etc., supra; Giboney v. Empire Storage and Ice Co., supra.

For these reasons, all of the assignments of error are overruled, the decree of the Chancellor is affirmed, and the cause is remanded to the Chancery Court for further proceedings not inconsistent with this opinion. The costs of the appeal are adjudged against appellants and the sureties on their appeal bonds.

S. L. FELTS,
Judge.

Hickerson, J., concurs.

Shriver, J., concurs.

APPENDIX C.

ALADDIN RADIO INDUSTRIES, INC., vs. ADKINS TRANSFER COMPANY, INC., et al.,	In Part II of the Chancery Court for Davidson County, Tennessee. Rule No. 76028.

DECREE.

This cause came on to be heard before the Honorable William J. Wade, Chancellor, holding Part II of the Chancery Court at Nashville, on May 27, 1955, upon the third petition of the complainant filed in this cause for an attachment for contempt of the bodies of Morris Joines, Jesse Knight, Robert Odum, Grady Tidwell, O. L. Griggs, Clifton Crim and W. Hunter, and that they and the defendants, Adkins Transfer Company, Inc., Wilson Truck Company, Inc., and St. Louis-Nashville Freight Lines, Inc., be required to answer the petition and be adjudged in contempt of Court.

This case further came on to be heard on May 27, 1955, and on prior days, on the question of whether or not this Court has jurisdiction of the subject matter of these suits and of the various defendants, and on motion to modify the injunction heretofore issued. The matter has been argued orally before the Court and briefs have been presented.

The Court finds and is of the opinion as follows: The recent decision of the Supreme Court of the United States in General Drivers, Warehousemen and Helpers, Local Union No. 89, etc., v. American Tobacco Company, Inc., decided on April 4, 1955, created doubt in the mind of the Court and also among others as to whether or not the injunction sought to be enforced by said contempt peti-

tion was issued within the jurisdiction of this Court and is valid and enforceable. The Court, however, on May 27, 1955, announced in open Court that said doubt has now been resolved and that this Court has not exceeded its jurisdiction and said injunction is valid and will be enforced henceforth by the Court, even though it requires employees of the common carrier defendants to cross a picket line at complainant's plant, and thereafter on June 10, 1955, the Court clarified this statement by stating that the Court will not compel a member of a Union, which is the duly authorized collective bargaining representative of the complainant's employees, to cross a picket line established at the complainant's plant by said bargaining representative and advertising a lawful strike against the complainant.

The Court is of the opinion that said decision of the United States Supreme Court in the American Tobacco case must be strictly construed. This Court will not permit its injunction, which has been validly issued, to be evaded in any manner. Picketing or picket signs in the vicinity of the complainant's plant, which are not placed there by the collective bargaining representative of the petitioner in connection with a strike which began before the injunction was issued will be considered an attempt to evade the injunction, and employees of the defendants must cross such a picket line.

The injunction heretofore issued in this case, as hereinabove construed and modified, will be strictly enforced. The Court has decided, however, that it will not punish any party for violations of said injunction which occurred during the period while the Court itself had announced that it was in doubt as to its jurisdiction in this cause and as to whether or not this Court may properly order an employee of a common carrier to cross a picket line at the complainant's plant.

It is, therefore, Ordered, Adjudged and Decreed as follows:

(1) The injunction heretofore issued in this cause will be strictly enforced even though it requires the employees of common carrier defendants to cross a picket line at the complainant's plant, provided, however, that no person shown to be a bona fide member of Local Union No. 5003 of the United Steelworkers of America, CIO, a duly authorized collective bargaining representative of a recognized bargaining unit of employees at the complainant's plant, will be required to cross the picket line of said Union at said plant.

(2) Said third petition of the complainant for contempt is hereby dismissed as to all the respondents named therein, except that the assessments of costs in connection with said petition will be reserved until further order of this Court.

Exceptions to this decree and prayers for appeals on behalf of all parties and all respondents cited for contempt are hereby noted, but all appeals from this decree are for the present denied.

.....

O. K. for Entry:

.....

WALLER, DAVIS & LANSDEN,
Solicitors for Complainant.

.....

WILLIAMS, HARWELL, HOWSER & THOMAS,
Solicitors for Respondents.

Decree of April 19, 1955, M. B. 64, P. 459.

ALADDIN RADIO INDUSTRIES, INC. vs. ADKINS TRANSFER COMPANY, INC., et al.	In Part II of the Chancery Court for Davidson County, Tennessee, Rule No. 76028.

DECREE.

This cause came on to be heard before the Honorable William J. Wade, Chancellor, holding Part II of the Chancery Court at Nashville, Tennessee, on April 15, 1955, upon the verified petition of the complainant filed in this cause on April 8, 1955, for an attachment for contempt of the bodies of Marvin Caylor, Douglas McCrary, Luther Caroll, Danzel C. Pedigo and L. H. Bradley and upon the unsworn answer to the petition of the above named respondents.

And it appearing to the Court that the respondents in their said answer admitted the charges against them as set forth in the petition and failed to show to the Court any just cause or excuse for violating said injunction, the Court is of the opinion that said defendants and each of them are guilty of contempt as alleged in said petition;

It is therefore ordered, adjudged and decreed that the respondents, Marvin Caylor, Douglas McCrary, Luther Caroll, Danzel C. Pedigo and L. H. Bradley, and each of them are guilty of contempt and that they and each of them are hereby fined Fifty Dollars ($50) and the costs of this proceeding incident to them and that if said fines and costs are not paid within 30 days that they and each of them be taken into custody by the Sheriff of Davidson County, Tennessee, and committed to the workhouse of said county and there be confined until each of them has paid or worked out said fine and costs as provided by law. If said fines and costs are not so paid within the aforesaid

time, the Clerk and Master will issue a mittimus accordingly.

To all of which the above named respondents except and pray an appeal to the next term of the Court of Appeals sitting at Nashville, which appeal is by the Court granted upon condition that said respondents duly execute appeal bonds as required by law and otherwise perfect their appeal within thirty days from the entry hereof.

The said respondents are hereby released to their solicitor of record without the requirement of bond pending the perfection of their appeal as herein granted.

All other matters in this cause are reserved.

O. K. for Entry:

J. P. DAVIS, MACLIN P. DAVIS, JR.,
Solicitors for Complainant and Petitioner,
Aladdin Radio Industries, Inc.

WILLIAMS, HARWELL, HOWSER and THOMAS,
By HUGH C. HOWSER,
Solicitor for Respondents Above Named.

APPENDIX D.

ALADDIN INDUSTRIES, INC., vs. ASSOCIATED TRANSPORT, INC., et al.	In Part II of the Chancery Court for Davidson County, Tennessee. Rule No. 75917.

DECREE.

This cause came on to be heard before Honorable William J. Wade, Chancellor, holding Part II of the Chancery Court at Nashville on May 27, 1955, upon the first, second and third contempt petitions of the complainant, filed in this cause. The first petition named as respondents: George McKay, George Johnson, W. H. Oliver, Thomas Mallory, Herman Armes, Joe Skalka, Herbert Miskelly and R. B. Pitt, and the defendants, Super Service Motor Freight Company, Inc., Hoover Motor Express Co., Inc., Wilson Truck Company, Inc., Associated Transport, Inc., and Southeastern Motor Truck Lines, Inc. The second petition named as respondents: Elgie Denney, A. Tillman, Charlie Fisher, Cecil Smith, Roy E. Gifford, Floyd Lamb, Michael Didonato, Herman Armes, Clifton Crim, J. W. Holman, Fate L. Forkum and George Parsley, and the defendants, Associated Transport, Inc., Wilson Truck Co., Inc., C & D Motor Delivery Company, Railway Express Agency and Super Service Motor Freight Co., Inc. The third petition named as respondents: Hansel Jones, Harry Childress, Homer Butler, Cecil Smith, W. B. Culbertson, B. T. Lentz, Raymond E. Tuggle, Truman Moran, James Carney, Thomas Waters, Paul Etheridge, Clarence Hinkle, Doyle Bell, ... Bissinger and L. D. Bennett, and the defendants, Super Service Motor Freight Co., Inc., Hoover Motor Express Company, C & D Motor Delivery Company, Railway Express Agency and Southeastern Motor Truck Lines, Inc.

This case further came on to be heard on May 27, 1955, and on prior days, on the question of whether or not this Court has jurisdiction of the subject matter of these suits and of the various defendants, and on motion to modify the injunction heretofore issued. The matter has been argued orally before the Court and briefs have been presented.

The Court finds and is of the opinion as follows: The recent decision of the Supreme Court of the United States in General Drivers, Warehousemen and Helpers, Local Union No. 89, etc., v. American Tobacco Company, Inc., decided on April 4, 1955, created doubt in the mind of the Court and also among others as to whether or not the injunction sought to be enforced by said contempt petition was issued within the jurisdiction of this Court and is valid and enforceable. The Court, however, on May 27, 1955, announced in open Court that said doubt has now been resolved and that this Court has not exceeded its jurisdiction and said injunction is valid and will be enforced henceforth by the Court, even though it requires employees of the common carrier defendants to cross a picket line at the complainant's plant, and thereafter on June 10, 1955, the Court clarified this statement by stating that the Court will not compel a member of a Union, which is the duly authorized collective bargaining representative of the complainant's employees, to cross a picket line established at the complainant's plant by said bargaining representative and advertising a lawful strike against the complainant.

The Court is of the opinion that said decision of the United States Supreme Court in the American Tobacco case must be strictly construed. This Court ill not permit its injunction, which has been validly issued, to be evaded in any manner. Picketing or picket signs in the vicinity of the complainant's plant, which are not placed

there by the collective bargaining representative of the petitioner in connection with a strike which began before the injunction was issued will be considered an attempt to evade the injunction, and employees of the defendants must cross such a picket line.

The injunction heretofore issued in this case, as hereinabove construed and modified, will be strictly enforced. The Court has decided, however, that it will not punish any party for violations of said injunction which occurred during the period while the Court itself had announced that it was in doubt as to its jurisdiction in this cause and as to whether or not this Court may properly order an employee of a common carrier to cross a picket line at the complainant's plant.

It is, therefore, Ordered, Adjudged and Decreed as follows:

(1) The injunction heretofore issued in this cause will be strictly enforced even though it requires the employees of common carrier defendants to cross a picket line at the complainant's plant, provided, however, that no person shown to be a bona fide member of Local Union No. 5003 of the United Steelworkers of America, CIO, a duly authorized collective bargaining representative of a recognized bargaining unit of employees at the complainant's plant, will be required to cross the picket line of said Union at said plant.

(2) Said first, second and third contempt petitions of the complainant are hereby dismissed as to all the respondents named therein, except that the assessments of costs in connection with said petitions will be reserved until further order of this Court.

Exceptions to this decree and prayers for appeals on behalf of all parties and all respondents cited for contempt

are hereby noted, but all appeals from this decree are for the present denied.

.....

O. K. for Entry:

WALLER, DAVIS & LANSDEN,
Solicitors for Complainant.

WILLIAMS, HARWELL, HOWSER & THOMAS,
Solicitors for Respondents.

Opinion of Chancellor Filed July 27, 1955.

ALADDIN INDUSTRIES, INC., vs. Rule No. 75917 ASSOCIATED TRANSPORT, INC.	In the Chancery Court, Part One, At Nashville.

CHANCELLOR'S MEMORANDUM.

The Court of Appeals has rendered an opinion in this cause and has refused to grant the relief sought by petitioners.

The record in this cause will reveal that the Court has made every effort to prevent the situation which now exists from coming to pass. No useful purpose would be served by reviewing the previous proceedings, wherein the Court explained what it considered to be the rights and duties of the respective parties, and entered orders directing that its mandate be carried out.

It is apparent from the proof before the court that the defendants hereinafter named have deliberately violated the orders of this Court in the face of warnings that such conduct could not and would not be tolerated.

It now becomes the unpleasant duty of the Court to hold in contempt of Court those of you who have violated its orders and punish you for so doing.

The defendants found guilty of deliberately failing or refusing to furnish common carrier service, while regularly employed by common carriers, in disobedience to the mandates of the Court are as follows:

M. M. Bratton	Albert Burnett
Joe Heald	Jack Shelton
Fred Johnson	Floyd Duncan
Clyde Kennedy	Thomas Mallory
Clyde Bowen	R. C. Working
L. V. Bennett	R. E. Odom
	T. A. Hargis

The punishment fixed for each of the above named defendants is three days in jail.

It further appears to the Court that picketing done at the premises of the Aladdin Company by Teamsters Local Union 327 was neither bona fide nor for a lawful purpose, but was done solely for the purposes of attempting to prevent the complainant from receiving common carrier service which this Court had decreed it was entitled to receive.

The uncontradicted proof in this cause is to the effect that the defendant, Don Vestal, as President, was fully in charge of said Local Union 327. It further appears, and is not contradicted, that a picket named Luna was paid $50.00 out of the Union's petty cash fund by defendant Vestal, for carrying and displaying, at the premises in question, a picket sign of said Local U 327.

The Court is of the opinion that such conduct on the part of Vestal was a wilful interference with the lawful processes of this Court, and was contemptuous of it. The Court therefore holds him guilty of contempt and likewise fixes his punishment at three days in jail.

The Court feels that the defendant trucking concerns did all that could be reasonably expected of them in trying

to comply with the orders of the Court, and the charges will be dismissed as to them.

A bail bond in the amount of $250.00 is fixed for each of the punished defendants herein.

A decree in accordance with the above Memorandum will be entered.

WM. J. WADE,
WM. J. WADE, Chancellor.

This July 27, 1955.

Decree of July 29, 1955, Minute Book 65, Page 202.

ALLADIN INDUSTRIES, INC., vs. ASSOCIATED TRANSPORT, INC., et al.	In Part II of the Chancery Court of Davidson County, Tennessee. Rule No. 75917.

This cause came on to be heard before the Honorable William J. Wade, Chancellor, holding Part II of the Chancery Court at Nashville, Tennessee, on this date and on former days of the term, upon the fourth petition of the complainant filed June 1, 1955, for an attachment for contempt for the bodies of Clyde Kennedy, Clyde Bowen, L. D. Bennett, Joe Heald, Albert Burnett, Don Vestal, Edward Smith, Perry Cannaday, Ewing King, Harry Creighton, James E. Payne and George D. Weakman, and upon the amendment and supplement to the fourth petition of complaint filed on June 8, 1955, for an attachment for contempt for the bodies of Fred Johnson, M. M. Bratton, W. B. Culbertson, Hassell Shelton, Don Vestal, Edward Smith, Perry Cannaday, Ewing King, Harry Creighton, James E. Payne and George D. Weakman; upon the fifth petition of the complainant filed on June 16, 1955, for an attachment for contempt for the bodies of Renaldo Herrera, Jack Shelton, Floyd Duncan, Thomas Mallory and

Dick Working; and upon the sixth petition of complainant filed on June 20, 1955, for an attachment for contempt for the bodies of Floyd Dunca, Robert Odom and T. A. Hargis; and for a decree on each of said petitions that the defendants, Associated Transport, Inc., Hoover Motor Express Co., Inc., C & D Motor Delivery Company, Super Service Motor Freight Co., Inc., Wilson Truck Co., Inc., Southeastern Motor Truck Lines, Inc., Railway Express Agency, Adkins Transfer Co., Inc., Mason & Dixon Lines, Inc., Pulaski Highway Express, Inc., Service Lines, Inc., St. Louis-Nashville Freight Lines, Inc., Tennessee Cartage Company, Inc., Wehby System, Mohawk Motor Lines and Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor and Local Union No. 5003 of the United Steelworkers of America, labor organizations, be adjudged in contempt of Court.

When the hearing began on June 25, 1955, Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor and Local Union No. 5003 of the United Steelworkers of America (CIO) and all of the individual defendants filed pleas in abatement upon consideration of which the Court overruled said pleas, to which action of the Court the said defendants excepted.

Thereupon, on said date the said two labor organizations and all of the individual defendants moved the Court to dismiss the petitions, upon consideration of which and after hearing argument of Counsel the Court overruled said motions, to which action of the Court all of said defendants excepted. Thereupon all of the defendants filed their answers and the individual defendants also filed their amended and supplemental answers and said cause came on to be heard upon the proof introduced in open court.

At the conclusion of petitioner's proof in chief the defendants, George Weakman, Harry Creighton, James Payne, Don Vestal, Edward Smith, Perry Cannaday and Ewing King moved the Court to dismiss the petition as to them, upon consideration of which and after argument of counsel the Court sustained said motion as to all of said defendants except Don Vestal and the case is accordingly dismissed as to said individual defendants except the defendant Don Vestal. To the action of the Court in overruling said motion the defendant Don Vestal excepted.

At the conclusion of petitioner's proof in chief the defendants, Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor and Local Union No. 5003 of the United Steelworkers of America (CIO), moved the Court to dismiss the petition as to them and upon consideration of which, after hearing argument of counsel, the Court sustained said motion as to the defendant Local Union No. 5003 of the United Steelworkers of America (CIO) and the case is accordingly dismissed as to said Local Union. The Court overruled said motion as to Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor. To which action of the Court said Local Union excepted.

Upon the conclusion of all the evidence the defendant, Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor, and the defendants, Don Vestal, Ronaldo Herrera, Hassel Shelton and W. B. Culbertson, moved the Court to dismiss the case as to them upon the ground that the evidence preponderated against their guilt and upon the grounds previously assigned in the written motions filed at the commencement of the hearing, which motion the Court granted as to the

defendants, Renaldo Herrera, Hassel Shelton and W. B. Culbertson, and overruled as to the defendants, Local Union No. 327 and Don Vestal, to which action of the Court said Union and Vestal thereupon excepted.

Thereupon the cause coming on further to be heard upon the entire record, the proof introduced in open Court and the argument of counsel, the Court finds that the defendants, Fred Johnson, M. M. Bratton, Joe Heald, Clyde Kennedy, Clyde Bowen, L. D. Bennett, Albert Burnett, Jack Shelton, Floyd Duncan, Thomas Mallory, R. C. Working, R. E. Odom and T. A. Hargis, had actual knowledge of the injunction referred to in the petition and that they and each of them were guilty of violating the injunction in that the defendants, Clyde Kennedy and Clyde Bowen refused to deliver freight consigned to complainant on May 27, 1955; the defendants, L. D. Bennett, Albert Burnett and Joe Heald, refused to pick up freight for complainant on May 31, 1955; the defendant M. M. Bratton refused to pick up freight for complainant on May 31, 1955; the defendant Jack Shelton refused to pick up freight for complainant on June 13, 1955; the defendants, Floyd Duncan, Thomas Mallory and Dick Working, refused to pick up freight for the complainant on June 14, 1955; the defendant Robert Odom refused to pick up freight for the complainant on June 15, 1955; the defendant T. A. Hargis refused to pick up freight for complainant on June 16, 1955; the defendant Floyd Duncan refused to pick up freight for complainant on June 17, 1955; and the defendant Fred Johnson refused to deliver freight consigned to complainant on May 31, 1955.

The Court further finds that after the issuance of the temporary injunction in this cause on March 29, 1955, the defendant Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor caused

pickets to be placed at the premises of the complainant company on the 1st day of June, 1955; that said picketing was neither bona fide nor for a lawful purpose but was done solely for the purpose of attempting to prevent the complainant from receiving common carrier service which the Court had decreed it was entitled to receive.

The Court further finds that the defendant Don Vestal, as president, was fully in charge of said Local Union No. 327; that said defendant Vestal paid a picket named Luna $500.00[1] out of the union's petty cash fund for carrying and displaying at the premises of Complainant a picket sign of said Local Union No. 327; that such conduct on the part of said defendants was a wilful interference with the lawful processes of the Court and contemptuous of it.

The Court further finds that each of the defendant trucking concerns did all that could be reasonably expected of them in endeavoring to comply with the orders of the Court and said petitions are dismissed as to said trucking companies.

It is therefore ordered, adjudged and decreed that the defendants, Fred Johnson, M. M. Bratton, Joe Heald, Clyde Kennedy, Clyde Bowen, L. D. Bennett, Albert Burnett, Jack Shelton, Floyd Duncan, Thomas Mallory, R. C. Working, R. E. Odom, T. A. Hargis and Don Vestal, are guilty of contempt and that they and each of them be imprisoned in the county jail of Davidson County, Tennessee, each for a period of three days. The Clerk and Master will issue a mittimus accordingly.

It is further ordered, adjudged and decreed by the Court that said defendant Local Union No. 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of American Federation of Labor, is

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[1] This is a typographical error. The correct figure is $50.00.

guilty of contempt, and as punishment therefor all costs incurred in the contempt proceedings are assessed against said Local No. 327, for which execution may issue.

To which action of the Court in finding each and all of the defendants guilty of contempt they and each of them excepted.

Counsel for said defendants in open court stated that the defendants would move for a new trial and asked leave of the Court to give bail bonds, with sureties to be approved by the Clerk and Master, and said bonds were fixed by the Court in the penal sum of $250.00 each, conditioned for their appearance and surrender to the Sheriff as aforesaid, pending the final disposition of their motion for a new trial. It is ordered that no mittimus issue by the Clerk and Master, provided said bail bonds are given by said defendants on or before August 3rd, 1955, at 4:30 P. M.; otherwise the Clerk and Master will issue a mittimus.

O. K. for Entry:

WALLER, DAVIS & LANSDEN,
Solicitors for Complainant.

ALBERT WILLIAMS,
Solicitor for Individual Defendants
and Local Union No. 5003.

CECIL D. BRANSTETTER,
Solicitor for Local Union No. 327
and its officers.

JUDSON HARWOOD, By D. L.,
WHITWORTH STOKES, By D. L.,
A. O. BUCK, By D. L.,
Solicitors for Carrier Defendants.

APPENDIX E.

Constitution of the United States, Article VI, second sentence:

"This Constitution and Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

29 U. S. C., Sec. 157. **Right of employees as to organization, collective bargaining, etc.**

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this title. As amended June 23, 1947, 3:17 p. m., E. D. T., c. 120, Title I, Sec. 101, 61 Stat. 140."

29 U. S. C., Sec. 158 (b) (4). **Unfair labor practices.**

"To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any em-

ployer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *."

"* * * **Provided,** That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter."

29 U. S. C., Sec. 163. **Right to strike preserved.**

"Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the

right to strike, or to affect the limitations of qualifications on that right. As amended June 23, 1947, 3:17 p. m., E. D. T., c. 120, Title I, Section 101, 61 Stat. 151."

Labor-Management Relations Act of 1947, 61 Stat. 161, 162.

"Sec. 501 (2). The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees."

"Sec. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."

49 U. S. C., § 316 (d). **Undue preferences or prejudices prohibited.**

"All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign

commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: **Provided, however,** That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

49 U. S. C., § 322 (b). **Jurisdiction of district courts to restrain violations and enforce orders.**

"If any motor carrier or broker operates in violation of any provision of this chapter (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this chapter, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

Tennessee Code Annotated, Section 65-512. **Special rate, rebate or drawback by common carrier or public service**

company prohibited—Preference in furnishing cars or motive power unlawful—Unjust discrimination.

"If any common carrier or public service company shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for any services rendered in the transportation of any kind of property, or any person, or any service within this state than it charges, demands, collects, or receives from any other person for a like service in transportation or service of a like kind under substantially like circumstances and conditions; and if such common carrier or such other public service company, make any preference between the parties aforesaid, in furnishing cars or motive power or otherwise, such common carrier or other public service company shall be guilty of unjust discrimination, which is prohibited and declared unlawful. [Acts 1897, ch. 10, § 15; Shan., § 3059a40; mod. Code 1932, § 5416.]"

Tennessee Code Annotated, Section 65-514. **Preferences are unlawful.**

"It shall be unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage. [Acts 1897, ch. 10, § 17; Shan., § 3059a42; Code 1932, § 5418.]"

APPENDIX F.

Decree of March 29, 1955, M. B. 64, P. 420.

ALADDIN RADIO INDUSTRIES, INC., v. ADKINS TRANSFER COMPANY, INC., et al.	In the Chancery Court for Davidson County, Tennessee. Rule No. 76028.

This cause came on to be heard before Honorable Wm. J. Wade, Chancellor, at chambers on March 28, 1955, upon the complainant's application for a temporary injunction against all of the defendants, as prayed for in the original bill, notice of said application having been given all the defendants, and upon consideration of the entire record in this cause and the argument of the solicitors for the respective parties at chambers, the Court is of the opinion that the temporary injunction as applied for should be granted.

It is therefore ordered that upon complainant's giving proper injunction bond in the penalty of $2500.00, a writ of injunction shall be issued as prayed, enjoining the defendants, and each of them, and their officers, agents, employees and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the customary manner in which such service was provided prior to January 25, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

The Clerk and Master will enter this decree at once on the chambers minutes of this Court as provided by law.

Dated: March 29, 1955.

WM. J. WADE,
Chancellor.

O. K. as to Form:

WALLER, DAVIS & LANSDEN,
By: J. P. DAVIS,
Solicitors for Complainant.

A. O. BUCK,
Solicitor for Defendants,
Associated Transport, Inc.,
Roadway Express, Inc.,
St. Louis-Nashville Freight
Lines, Inc.,
Super Service Motor Freight Co.,
Inc., and
Wilson Truck Co., Inc.

JUDSON HARWOOD,
Solicitor for Defendants,
Adkins Transfer Company, Inc., and
Johnson Freight Lines, Inc.

CLARENCE EVANS,
Solicitor for Defendant,
Hayes Freight Lines, Inc.

GEORGE H. CATE,
Solicitor for Defendant,
Silver Fleet Motor Express, Inc.

CHARLES HUDSON,
Solicitor for Defendant,
Southeastern Motor Truck Lines, Inc.

APPENDIX G.

ALADDIN INDUSTRIES, INC.

v.

ASSOCIATED TRANSPORT, INC. et al.,

} Davidson Equity.

Court of Appeals of Tennessee
Middle Section at Nashville.

Petition for Certiorari and Supersedeas to a Decree of the Chancellor

Honorable William J. Wade, Chancellor

Filed July 22, 1955.

Williams, Harwell, Howser & Thomas, of Nashville, for Petitioners.

Waller, Davis & Lansden, of Nashville, for Respondent.

Petition Denied.

S. L. FELTS,
Judge.

ALADDIN INDUSTRIES, INC.

v.

ASSOCIATED TRANSPORT, INC. et al.,

} Davidson Equity.

OPINION.

The principal case is an injunction suit by a shipper against 14 motor truck carriers to compel them to continue the service. It is pending in the Chancery Court, Part II, at Nashville. An ancillary phase of it is presented to this Court by a petition of eight truck drivers, em-

ployees of defendants, for the writs of certiorari and supersedeas to remove the cause to this Court, to review and supersede an interlocutory decree entered by the Chancellor on June 13, 1955, relating to the temporary injunction theretofore issued.

None of the petitioners was named in the bill or made a party to the suit. The temporary injunction, following the practice in equity, ran against defendants "and their officers, agents and employees". Petitioners were brought into this ancillary proceeding by a petition filed against them for contempt for violating the injunction. Before answering that petition and before any steps were taken under it, they presented this petition for certiorari and supersedeas.

The shipper, Aladdin Industries, Inc., hereinafter called respondent, has a plant in Nashville where it is engaged in the business of manufacturing goods. It receives shipments of raw materials to the plant and ships its manufactured products from the plant. Defendants are engaged in business as common carriers by motor truck, operating under certificates of convenience and necessity from the Interstate Commerce Commission and from the Public Service Commission of Tennessee. They regularly maintained pick-up and delivery service at respondent's plant until shortly before this suit.

Aladdin Radio Industries, Inc., is a separate corporation from respondent, engaged in a different business, but is an affiliate and leases and occupies space in respondent's plant. Each of them has its own employees, and the collective bargaining agent of the employees of the affiliate is Local Union No. 5003 of the United Steelworkers of America, CIO, while such agent for respondent's employees is Local Union No. 4802 of said United Steelworkers.

The collective bargaining contract between Aladdin Radio Industries, Inc., and its employees expired January

24, 1955, and on the next day the employees went on strike, and Local Union No. 5003 set up pickets at the entrances to respondent's plant, which have been maintained ever since. Respondent's employees, however, did not go on strike, but have continued to work, passing back and forth across the picket lines.

Likewise, defendant carriers' employees, who are members of Local Union No. 327 of Teamsters, Chauffeurs, Helpers and Taxicab Drivers, AFL, continued to maintain their regular pick-up and delivery service at respondent's plant, these truck drivers crossing the picket lines without objection. However, early in February 1955, a number of defendant carriers ceased to render the service at the plant, apparently because their truck drivers became unwilling to cross the picket lines.

On February 10, 1955, respondent filed its bill against seven of the carriers which had stopped furnishing the service. After notice and hearing, a temporary injunction, as prayed for, was granted enjoining defendants "and their officers, agents and employees" from failing and refusing to render the customary service to respondent, under the legally established rates and rules applicable to such service, as the same had been rendered, before February 3, 1955.

When this temporary injunction was served on defendants, all these carriers resumed the service, carrying shipments to and from respondent's plant, their truck drivers crossing the picket lines without trouble. They continued to furnish such service from February 11, when the injunction was issued, until May 17, 1955, when some of defendants stopped furnishing the service.

Thereupon respondent filed a supplemental bill bringing in the other seven carriers as defendants, and a like temporary injunction issued against them. Meanwhile, respondent filed petitions against some of the other car-

riers and certain of their drivers for contempt for disobeying the injunction. There were a number of hearings upon these matters before the Chancellor. He dismissed these petitions, because of the doubt as to his jurisdiction which had been raised by the United States Supreme Court's decision, on April 4, 1955, in General Drivers, etc., v. American Tobacco Co., Inc., ... U. S. ..., 99 L. ed. 470.

He later resolved the doubt, concluded that he had jurisdiction and entered an interlocutory order or decree on June 13, 1955, stating that the temporary injunction would be strictly enforced, but that no member of the union which was the collective bargaining agent of respondent's employees, would be required to cross a picket line established at its plant by such agent, advertising a lawful strike. The material part of this order was:

> "It is, therefore, ordered, adjudged and decreed as follows:
>
> (1) The injunction heretofore issued in this cause will be strictly enforced even though it requires the employees of common carrier defendants to cross a picket line at the complainant's plant, provided, however, that no person shown to be a bona fide member of Local Union No. 5003, of the United Steelworkers of America, CIO, a duly authorized collective bargaining representative of a recognized bargaining unit of employees at the complainant's plant, will be required to cross the picket line of said Union at said plant."

In the meantime, while the Chancellor had the case under advisement and before he entered this interlocutory order or decree of June 13, respondent filed a petition against some of the carriers and these eight truck drivers for contempt for refusing to obey the temporary injunction. But no answer to the petition was filed by these eight truck drivers and no action was taken on the petition pending the Chancellor's consideration of the case.

It is this interlocutory order of June 13, which petitioners seek to review and reverse by this petition. They say the Chancery Court had no jurisdiction of the subject matter of this case because it is a labor dispute jurisdiction of which has been taken from the State and given exclusively to the National Labor Relations Board, by the National Labor Relations Act, 1935, and the Labor Management Relations Act, 1945, 29 U. S. C. A., secs. 141 et seq.; and that, therefore, this order was void and petitioners have no adequate remedy save that of certiorari and supersedeas.

This Court, or member thereof, is authorized to grant the writ of certiorari, and in aid thereof, the ancillary writ of supersedeas, to review an interlocutory order or decree of a lower court only (1) where such court "has exceeded the jurisdiction conferred or is acting illegally" and (2) where "there is no other plain, speedy or adequate remedy." Code section 8989.

To warrant the grant of the writs of certiorari and supersedeas in this case, petitioners must show (1) that the Chancellor acted outside or in excess of his jurisdiction and (2) that there is no adequate remedy except that of certiorari and supersedeas. Conners v. City of Knoxville, 136 Tenn. 428, 435, 189 S. W. 870, ...; State ex rel. v. Hunt, 137 Tenn. 243, 249, 192 S. W. 931, ...

The first question is whether the subject matter of this suit has been pre-empted by Congress, by these Acts (29 U. S. C. A. 141 et seq.), or still remains within state control and, therefore, within the jurisdiction of the Chancery Court. It is natural that a state court should approach such a question with diffidence, because it is enveloped in difficulty and doubt.

The Supreme Court, in the Garner Case, speaking through Mr. Justice Jackson, said: "The national Labor

Management Relations Act, as we have before pointed out, leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." Garner v. Teamsters, C. & H. Union, 346 U. S. 485, 488, 98 L. ed. 228, 238.

In the Richman Brothers Case, decided April 4, 1955, the Court, by Mr. Justice Frankfurter, said this: "As we have noted in the Weber case, 'the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds.' 348 U. S., at .... What is within exclusive federal authority may first have to be determined by this Court to be so." Amalgamated C. W. of A. v. Richman Bros, ... U. S. ..., 99 L. ed. 422, 426.

Generally speaking, it seems that the intent of both the National Labor Relations Act, 1935, and the Labor Management Relations Act, 1947, 29 U. S. C. A. 141 et seq., was to apply only to the relation of employer and employees in industries in or affecting interstate commerce. The purpose was to declare the rights of employees and of employers, to define "unfair labor practices" by employers, and by labor unions and their agents, and to set up the National Labor Relations Board to regulate the relations between employers on one side and employees and labor unions on the other, by the administrative process in lieu of private initiative in the law courts. 29 U. S. C. A. 141 et seq.; Garner v. Teamsters, C. & H. Union, supra.

The subject matter of this suit does not involve any employer-employee relation. It is a suit by complainant shipper against defaulting carriers. No labor union and no member of any labor union is a party to the suit. Complainant has not alleged that any unfair labor practice is involved. The only relief sought was a temporary injunction to require defendants to perform their duty of car-

riage, and on final hearing, a permanent injunction to the same effect.

This temporary injunction ran against defendants "and their officers, agents and employees," according to equity practice. This form of injunction against corporate defendants is necessary to enable the court to enforce its writ. A corporation acts only through its officers, agents and employees, and it is only through them that its action can be restrained or compelled. 2 Daniell's Chancery Pleading and Practice (6th Am. ed.) 1673; Gibson's Suits in Chancery, 3rd ed., sec. 834; Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730, 742, 19 L. R. A. 387, 393.

> "An injunction not only binds parties defendant, but also those identified with them in interest or subject to their control, and may issue against and be binding on the agents and employees of a party without the agents and representatives being made parties to the suit. In re Lennon, 166 U. S. 548, 17 S. Ct. 658, 41 L. Ed. 1110; Chase National Bank v. Norwalk, 291 U. S. 431, 54 S. Ct. 475, 78 L. Ed. 894, and Rule 65 (d), Federal Rules of Civil Procedure, 28 U. S. C. A." Baltimore & C. R. Co. v. Chicago River & Indiana R. Co., 170 F. (2d) 654, 659, cert. denied 336 U. S. 944, 93 L. ed. 1101.

The injunction in our case was not directed to, nor did it command, any individual employees by name. Nor did it attempt to enforce specific performance of personal service by any of them. Nor did it interfere with the right to strike, or require any of them to work for defendants. It is only an order restraining them, if and when they do work for defendants, from doing such work in a way contrary to defendants' public duty, and from violating the rights of complainant (respondent) and the order of the court made to preserve such rights. Toledo A. A. & N. M.,

Ry. Co. v. Pennsylvania Co., supra, 54 Fed. 743, 19 L. R. A. 394.

Such a suit by a shipper against carriers is within the jurisdiction of the Chancery Court. Our statutes (Code Supp., secs. 5501.11, 5501.19, 5501.20) give that court jurisdiction to grant injunctions to compel a common carrier to perform its duty of carriage. Such also is the general rule of equity in state and federal courts. Memphis News Publishing Co. v. Southern Ry. Co., 110 Tenn. 684, 75 S. W. 941, 63 L. R. A. 150; Hogan v. Nashville Interurban Railway Company, 131 Tenn. 244, 174 S. W. 1118, L. R. A. 1915E 788, Ann. Cas. 1916C 1162; Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., supra; Peoria & P. U. R. Co. v. United States, 263 U. S. 527, 636, 68 L. ed. 427, 431; cf. Carner v. Teamsters, C & H Union, supra, 346 U. S. 496, 98 L. ed. 242.

As stated, petitioners are not parties to this suit. They are defendants to the ancillary contempt proceeding, which was brought against defendant carriers and petitioners, charging that petitioners, working for the defendants and standing in law **as the defendants**, wilfully disobeyed the injunction. While that proceeding may affect petitioners, we are not told how it can make this case a labor dispute so as to defeat the state court's jurisdiction and vest exclusive jurisdiction in the National Labor Relations Board.

It appears that defendant carriers' employees, members of one union, refuse to cross the picket line set up by another union at respondent's plant. The practice of not crossing picket lines is an important weapon in Labor's fight for the gains it has made, and no friend of Labor wishes to see this weapon weakened.

And it is preserved by the Labor Management Relations Act. The section of that Act which defines "unfair labor practices" by unions provides that nothing in that section

shall be construed to make it unlawful for an employee to refuse to cross a picket line thrown up to support a lawful strike. This leaves it a matter of contract and leaves employer and employee free to contract as they wish about this matter. National Labor Relations Board v. Rockaway News Supply Co., 345 U. S. 71, 80, 97 L. ed. 832, 839.

It appears that defendant carriers and their employees have put into their collective bargaining contract a provision that it shall not be a violation of their contract for an employee to refuse to cross a picket line of a union or to refuse to handle "unfair goods."

That contract, however, is a matter between defendant carriers and their employees, and, of course, does not bind third persons or affect their rights. Such a contract cannot excuse defendant carriers from performing their public duty of carriage. Memphis News Publishing Co. v. Southern Ry. Co., supra. Nor does the refusal of defendant's employees to cross the picket line at respondent's plant constitute an unfair labor practice so as to make this a case within the exclusive jurisdiction of the NLRB. 29 U. S. C. A., 158 (b) (4); National Labor Relations Board v. Rockaway News Supply Co., supra.

The case of General Drivers, etc. v. American Tobacco Co., Inc., ... Ky. ..., 264 S. W. (2d) 250, reversed, ... U. S. ..., 99 L. ed. 470, relied on by petitioners and referred to by the Chancellor, was a suit by the American Tobacco Co. against a union and its members, some of them employees of the Company's subsidiary, to enjoin picketing in a strike conducted by the union at a plant occupied by the Company and its subsidiary and to compel common carrier employees, members of the same union, to cross the picket line and handle freight for the Company. The Company charged that the picketing was a secondary boycott and thus alleged facts constituting an "unfair labor practice" under the Taft-Hartley Act [29 U. S. C. A., sec. 158 (b) (4)].

The Kentucky Court of Appeals, treating the Company and its subsidiary as one, held the picketing was primary and not secondary, as charged, and also held that the Company was entitled to an injunction requiring the common carrier employees to cross the picket line. The United States Supreme Court reversed the case in a Per Curiam as follows: "The judgment is reversed. Weber v. Anheuser-Busch, Inc., No. 97, October Term, 1954, decided March 29, 1955 (... U. S. ..., 99 L. ed. [Advance, p. 386], 75 S. Ct. ...); Amalgamated Asso. etc. v. Wisconsin Employment Relations Boards, 340 U. S. 383, 95 L. ed. 364, 71 S. Ct. 359, 22 A. L. R. 2d 874." ... U. S. ..., 99 L. ed. 470.

In the Weber Case, an employer sued the union, the collective bargaining agent of its employees, in the state court to enjoin a strike, alleging it was a secondary boycott in violation of state law and constituted an "unfair labor practice" under the Taft-Hartley Act [29 U. S. C. A. (b) (4)]. It was held that the latter averment made a case within the exclusive jurisdiction of the NLRB and the state court had no jurisdiction.

In the Amalgamated Association Case, unions, bargaining agents of employees of local public utilities in Milwaukee, called a strike, which the state enjoined under its public Utility Anti-Strike Law. It was held that this statute was invalid as being in conflict with the Federal Acts which permitted such strikes against public utilities.

So in the American Tobacco Company Case, supra, it seems that so much of it as sought to enjoin the picketing made a case of "unfair labor practice" under the Weber Case, and so much of it as sought to compel the public utility employees to cross their own picket line violated the federal right to strike under the Amalgamated Association Case.

It seems that the American Tobacco Company Case is to be distinguished from the case at hand. That case involved the employer-employee relation and a labor controversy within the Federal Acts, and the NLRB had full power to deal with that controversy and afford a remedy. But this case does not involve any employer-employee relation or any controversy with which the NLRB seems able to deal. We are pointed to no provision of the Federal Acts giving that Board power to afford any relief to respondent shipper against these defaulting carriers.

It would seem that this lack of power in the Board to afford a remedy in a controversy, has led the Court to hold that such a controversy has not been pre-empted by federal authority but still remains within state power. In the Weber Case, Mr. Justice Frankfurter reviews a number of such cases. .... U. S. ...., 99 L. ed. 392.

So, in the absence of any clearer indication from the Supreme Court that such a case as this has been pre-empted by federal authority, it would seem reasonable to conclude that it remains within state authority, and that the Chancery Court has jurisdiction of this case.

But if this conclusion is erroneous, and if the Chancellor did not have jurisdiction to grant the injunction or enter the order complained of, it does not follow that petitioners are entitled to the writs of certiorari and supersedeas. To entitle them to such writs, not only must the lower court have acted outside or in excess of his jurisdiction but also there must be no other plain, speedy or adequate remedy.

It appears that petitioners have another plain, speedy and adequate remedy. If a judgment should be entered against them in this ancillary contempt proceeding, such judgment would be final and appealable as or right, even though the principal case is still pending. B. F. Stief Jewelry Co. v. Walker, 36 Tenn. App. 427, 256 S. W. (2d) 392.

Having this remedy of appeal, petitioners are not entitled to the writs of certiorari and supersedeas. Gilbreath v. Ferguson, 195 Tenn. 528, 260 S. W. (2d) 276; Helton v. State, 194 Tenn. 299, 250 S. W. (2d) 540.

For these reasons, the petition for the writs of certiorari and supersedeas must be denied. The Clerk is directed to file the transcript, the briefs, the petition, and this opinion, and an order will be entered on the minutes of this Court denying the petition and taxing the costs against petitioners.

.....
Judge.

ALADDIN RADIO INDUSTRIES, INC.
v.
ADKINS TRANSFER COMPANY, INC., et al.
} Davidson Equity.

Court of Appeals of Tennessee,
Middle Section at Nashville.

Petition for Certiorari and Supersedeas to a Decree of the Chancellor.

Honorable William J. Wade, Chancellor.

Filed July 22, 1955.

Williams, Harwell, Howser & Thomas, of Nashville, for Petitioner.

Waller, Davis & Lansden, of Nashville, for Respondent.

Petition denied.

S. L. FELTS,
Judge.

ALADDIN RADIO INDUSTRIES, INC.,

v.

ADKINS TRANSFER COMPANY, INC., et al.

Davidson Equity.

MEMORANDUM.

This is a petition for certiorari and supersedeas. This suit was brought by a shipper against motor truck carriers to compel them to continue the service. Petitioners, employees of some of the carriers, were permitted to have themselves made defendants to challenge the Chancery Court's jurisdiction.

This petition for certiorari and supersedeas is a companion case to Aladdin Industries, Inc., v. Associated Transport, Inc., et al., decided today, and was presented at the same time with that case, raising the same questions and relying on the same authorities. Though this case differs in some of its facts, still it seems to be controlled by the same considerations and the same authorities that rule the other case.

For the reasons advanced and the authorities cited in that case, the petition in this case must be denied. The Clerk is directed to file the transcript, the petition, the briefs, and this memorandum, and an order will be entered on the minutes of this Court denying the petition and taxing the costs against petitioners.

/s/ S. L. FELTS,
Judge.

APPENDIX H.

Decree of February 11, 1955, M. B. 177 P. 352.

ALADDIN INDUSTRIES, INC. v. ASSOCIATED TRANSPORT, INC. et al.,	In the Chancery Court for Davidson County, Tennessee. Rule No. 72917.

This cause came on to be heard on February 10, 1955 before Honorable J. Ross Cheshire, Jr., sitting by interchange for Chancellor Thomas A. Shriver, as Special Chancellor, upon the complainant's application for a temporary injunction against all of the defendants, as prayed for in the original bill, notice of said application having been given all the defendants, and upon consideration of the entire record in this cause and the argument of the solicitors for the respective parties in open Court, the Court is of the opinion that the temporary injunction as applied for should be granted.

It is therefore ordered that upon complainant's giving proper injunction bond in the penalty of $3,000.00, a writ of injunction shall be issued as prayed, enjoining the defendants, Associated Transport, Inc., Hoover Motor Express Co., Inc., C & D Motor Delivery Company, Super Service Motor Freight Co., Inc., Wilson Truck Co., Inc., Southeastern Motor Truck Lines, Inc., and Railway Express Agency, and each of them, their officers, agents, employees, members, associates and/or confederates from failing or refusing to provide customary service to complainaint under the legally established rates and rules applicable to such service, and in accordance with the customary manner in which such service was provided prior to February 3, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective de-

fendants or freight tendered by others for transportation to complainant.

J. ROSS CHESHIRE, JR.,
Special Chancellor.

O. K. for entry

J. P. DAVIS, Solr. for complainant.

Decree of May 30, 1955, M. B. 65 P. 55.

In the Chancery Court, Part II, for Davidson County, Tennessee.

ALADDIN INDUSTRIES, INC.
v.
ASSOCIATED TRANSPORT, INC. et al., } Rule No. 75917.

This cause came on to be heard on May 27, 1955, upon the supplemental bill of the complainant, Aladdin Industries, Inc., filed in this cause on May 23, 1955, praying that the following corporations be made additional parties defendant in this cause: Adkins Transfer Company, Inc., Mason Dixon Lines, Inc., Pulaski Highway Express, Inc., Service Lines, Inc., St. Louis-Nashville Freight Lines, Inc., Tennessee Cartage Com[illegible], Inc., and Wehby System, Mohawk Motor Lines, and praying for a temporary injunction, to compel said additional defendants and their employees to render common carrier service to the complainant, as prayed in said supplemental bill.

Upon consideration of the entire record in this cause and the argument of the solicitors for the respective parties in open Court, the Court is of the opinion that the temporary injunction as applied for should be granted.

It is therefore ordered that upon the complainant's giving proper injunction bond in the penalty of $2500.00, the writ of injunction shall be issued as prayed, enjoining the defendants, Adkins Transfer Company, Inc., Mason Dixon Lines, Inc., Pulaski Highway Express, Inc., Service Lines, Inc., St. Louis-Nashville Freight Lines, Inc., Tennessee

Cartage Company, Inc., and Wehby System, Mohawk Motor Lines, and each of them, their officers, agents, employees, members, associates and/or confederates from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the customary manner in which such service was provided prior to February 3, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

O. K. for Entry:

WALLER, DAVIS & LANSDEN,
Solicitors for Complainant.

WALTER HARWOOD,
Solicitor for Defendant Adkins Transfer Company, Inc.

.....
Solicitor for Defendant, Mason Dixon Lines, Inc.

.....
Solicitor for Defendant, Pulaski Highway Express, Inc.

WALTER HARWOOD,
Solicitor for Defendant, Service Lines, Inc.

A. O. BUCK,
Solicitor for Defendant, St. Louis-Nashville Freight Lines, Inc.

.....
Solicitor for Defendant, Tennessee Cartage Company, Inc.

.....
Solicitor for Defendant, Wehby System, Mohawk Motor Lines.

Supreme Court, U.S.
FILED
AUG 5 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. [redacted] 116

DOUGLAS McCRARY and M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC., and
ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writs of Certiorari.

ALBERT WILLIAMS,
1101 Stahlman Building,
Nashville, Tennessee,
CECIL D. BRANSTETTER,
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Counsel for Petitioners.

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4 Stahlman Building,
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Birmingham, Alabama,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 976.

DOUGLAS McCRARY and M. M. BRATTON et al.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC., and
ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writs of Certiorari.

Petitioners respectfully request that the following reply be filed to the "Memorandum of Respondents in Answer to Petition for Writs of Certiorari":

I.

The petition filed herein did not discuss the question of whether, by the law of Tennessee, petitioners may be in contempt of a void injunction. No such issue has been raised; respondents cannot avail of any such issue at this late hour.

The injunction for which petitioners have been held in contempt was issued without jurisdiction of the Tennessee Chancellor over the subject matter. **Teamsters' Union v. Kerrigan Iron Works, Inc.**, ... U. S. ..., 77 S. Ct 1055 (1957); see, also, cases cited in Petition herein.

By the established law of Tennessee, an injunction so issued without jurisdiction of the subject matter is void,[1] its violation is not a contempt, and the injunction may be attacked collaterally:

> "If the attack is successful, the fiat was utterly void for want of jurisdiction of the judge awarding it and disobedience of the injunction is not a contempt. Howell v. Thompson, 130 Tenn. 311, 170 S. W. 253; 12 Am. Jur. 408, Sec. 26;[2] 17 C. J. S., Contempt, Sec. 14, p. 19; Gibson's Suits in Chancery, Art. 814, note 43.
>
> "A void Judgment is no judgment at all and binds nobody."
>
> **Churchwell v. Callens**, 252 S. W. 2d 131, at 133.

Direct appeal lies from a judgment of contempt of such a void order in Tennessee. That procedure has been ex-

---

[1] Cf. *Oliver v. Local or Subordinate Lodge No. 656, Etc.*, 182 Tenn. 236, 185 S. W. 2d 525.

[2] The principle followed by the Courts of Tennessee and cited by the Tennessee Court from *12 Am. Jur. 408*, reads, to the extent applicable:

> ". . . The only legitimate inquiry in a contempt proceeding, based upon the violation of an injunction, is whether the court granting it had jurisdiction of the parties and of the subject matter; the question whether the order was erroneous will not be considered. If the court had the jurisdiction required, the fact that its power was erroneously exercised does not render the injunction void, but only voidable on proper application; and, until set aside or revoked, it is entitled to implicit obedience. *Where, however, the court in granting the injunction acted without jurisdiction, a violation of the order which it assumed to make does not constitute contempt; no one is bound to obey such a decree and the court making it has no power to punish a disobedience thereof.* . . ." (Emphasis supplied.)

pressly recognized by the Court of Appeals of Tennessee as the law of the present cases. In denying certiorari to review the Chancellor's assertion of jurisdiction at an early stage of these proceedings, the Court of Appeals of Tennessee held them to be within the Chancery Court's jurisdiction, and added:

> "But if this conclusion is erroneous, and if the Chancellor did not have jurisdiction to grant the injunction or enter the order complained of, it does not follow that petitioners are entitled to writs of certiorari and supersedeas. To entitle them to such writs, not only must the lower court have acted outside or in excess of its jurisdiction but also there must be no other, plain, speedy or adequate remedy.
>
> "It appears that petitioners have another plain, speedy and adequate remedy. **If a judgment should be entered against them in this ancillary contempt proceeding, such judgment would be final and appealable as of right, even though the principal case is still pending.** B. F. Steif Jewelry Co. v. Walker, 36 Tenn. App. 427, 256 S. W. (2d) 392.
>
> "Having this remedy of appeal, petitioners are not entitled to the writs of certiorari and supersedeas . . . . " (Emphasis supplied.)
>
> **Aladdin Radio Industries, Inc., v. Adkins Transfer Co.**, 28 Labor Cases 69, 387 at p. 89,569. (See entire Opinion set out in Appendix G, page 52, Petition herein.)

Indeed, in the proceedings below, respondents have never suggested that the law of Tennessee is otherwise.[3] Respondents' briefs and arguments to the Court of Ap-

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[3] *Nashville Corporation v. United Steelworkers of America*, 187 Tenn. 440, 215 S. W. (2d) 818, does not relate to a void injunction issued without jurisdiction of the subject matter. The opinion deals with the necessity of obeying irregular or erroneous—as distinguished from void—judgments. Gibson's authoritative "Suits in

peals of Tennessee, and to the Supreme Court of Tennessee in opposition to certiorari from that Court, were prepared by eminently able practitioners at the Tennessee bar. They did not contain a single word of suggestion that petitioners would be in contempt even if the injunction were to be found void for want of jurisdiction of the subject matter. Those briefs and arguments did not contain a single citation of the **United Mine Workers'** case (330 U. S. 258), or a single reference to principles that case may make applicable in Federal courts. On the contrary, those briefs and arguments, in the main, were directed to support of the Chancellor's jurisdiction. That was the major issue below—an issue completely resolved against respondents by **Kerrigan.** Respondents' unsupported suggestion, now, that the doctrine of the **United**

Chancery," 5th ed., by which Tennessee Courts are guided, thus declares the Tennessee law:

"As to the efficacy and probative force, judgments and decrees are of three sorts:

"1. *Valid Judgments and Decrees*, being those based on jurisdiction of both the subject matter and the person, and justified by the pleadings and proofs, or the consent of the parties; they are proof against direct attacks by appeals or writ of error, or by bill in Chancery, and, of course, also, against collateral attacks.

"2. *Voidable Judgments and Decrees*, being those which are valid on their face, and, therefore, proof against collateral attack, but are reversible on direct attack by appeal or writ of error, or by bill in Chancery.

"3. *Void Judgments and Decrees*, being those that appear on the face of the record itself to have been rendered without jurisdiction of the parties or the subject matter, or without being justified by the pleadings, or the consent of parties. *Void judgments have no efficacy or probative force, and yield to collateral attack.*" (Emphasis supplied.) Art. 454, at p. 518.

"* * * There is a wide difference between a void judgment and a voidable judgment. See, ante, Arts. 454, 607. *A void judgment binds nobody; it bars nobody; it is a nullity; and no judgment at all; and justifies no act done under it.* Holmes v. Eason, 76 Tenn. 754, 760; Finley v. Gaut, 67 Tenn. 148, 151. A voidable judgment, however, binds everybody, and justifies every act done under it, until reversed or set aside." Footnote 50, Art. 860, at p. 63. (Emphasis supplied.)

Mine Workers' case is somehow involved, comes not only late, but frivolously.[4]

Tennessee's law governs the disposition of the judgments of contempt; it differs materially from Respondents' characterization of **United Mine Workers.**

The law of Tennessee, recognized by all parties below and by all courts below, is clear:

> "If the Court is without jurisdiction of the subject-matter in which it is undertaking to proceed, its orders are void. **An injunction made in respect to a subject-matter beyond the jurisdiction of the Court is a mere nullity, and is binding on no one"** (emphasis supplied).
>
> **Howell v. Thompson,** 170 S. W. 253, 256.

The judgments of contempt against petitioners, based upon void injunctions, therefore, cannot stand and should

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[4] The brief of Respondents in the Tennessee Supreme Court expressly recognizes the right of collateral attack on a void injunction, stating:

"Propositions of Law.

"1. The injunction granted in this case was valid on its face and was within the traditional and customary jurisdiction of the chancery court. *Unless the contrary is clearly shown,* it is to be assumed that the court had jurisdiction and that the injunction was properly issued. This is particularly true *in the present case where a collateral attack is being made on the jurisdiction of the court by parties who wilfully violated the injunction. The burden of showing invalidity is on those convicted of contempt.*" (Emphasis supplied.)

Nashville Corporation v. United Steelworkers, 187 Tenn. 444, 215 S. W. 2d 818.

That brief also explains:

". . . The only possible question remaining for this Court to consider on petition for certiorari is whether or not the injunction which the appellants were conclusively found to have violated was void for lack of jurisdiction." *Reply Brief and Argument on Behalf of Aladdin Industries, Inc.,* In the Supreme Court of Tennessee, pp. 4 and 3.

Petitioners have readily assumed *and* have completely discharged the burden of establishing that lack.

be reversed by this Court. **Amalgamated Association, etc., v. Wisconsin Employ. Rel. Bd.**, 340 U. S. 387, 71 S. Ct. 359.

II.

The present case and the **Kerrigan** case are substantially identical. The same Local 327 and its members, and the same collective bargaining provisions insuring the right to respect peaceful picket lines, are involved in both cases. In both there has been the same invasion by the State Chancellor of an area pre-empted by Congress.

The same Tennessee Chancellor issued the challenged orders in both cases, under the identical misconception in both that (by enforcement of a Tennessee policy applicable to common carriers) he could forbid, or impose punishment for, peaceful picketing in an interstate industry.

On appeal **Kerrigan** and the present case were treated alike by the Court of Appeals of Tennessee.

Finally, in this Court, there is little difference of form or substance between the questions presented by the petition in **Kerrigan** and those raised by the petition here. Both sets of questions challenged the jurisdiction of the Tennessee Chancellor to interfere with peaceful picketing of an interstate industry by his reliance upon Tennessee law governing the obligations of common carriers. In **Kerrigan**, his interference was by injunction. Here, there has been a similar injunction (running against substantially the same parties) plus enforcement by judgments of contempt. Respondents incorrectly read the record in suggesting that **Kerrigan** involved an injunction against the Union while the present case does not. Even if the presence of the Union in the suits were governing, the short answer is: In the present case the Union has been held in contempt of the injunction, and, thus, has been enjoined to an actually more damaging extent than in **Kerrigan**. The doctrine of Federal pre-emption is, a fortiori, the more violated by enforcement of the Chan-

cellor's decree than by its mere issuance. And, in fact, the Court of Appeals of Tennessee pointedly treated the Union here as subject to the injunctions, as an agent of the named defendants with knowledge of their terms, just as if the Union had been named in the complaints. The following virtually identical and summarizing language appears in the opinions of that Tennessee Court in **Kerrigan**, and in the present cases:

Kerrigan.	**Aladdin.**
"The only conduct complained of is the conduct of the carriers in not rendering the service and the conduct of appellants in interfering to prevent such service."	"The only conduct complained of by the suit is the conduct of the carriers in not rendering their service, and the conduct of appellants in interfering to prevent each service."

(See Appendix hereto, p. .....)

The almost exact identity of **Kerrigan** to the present case is highlighted by Appendix "A" hereto. That Appendix sets out parallel considerations in the respective opinions of the Court of Appeals of Tennessee.

Challenged action of the Chancellor in both cases conflicts with pre-emptive Federal legislation. Neither action can stand.

III.

The decision of this Court in **Kerrigan** is conclusively precise support for granting of the writs. It likewise, we respectfully submit, justifies summary disposition of these cases. The respondents in **Kerrigan** could not successfully rely upon the suggested distinction that the business of common carriers is of a public nature and under Tennessee law involves obligations to perform peculiar services for the shipping public of Tennessee. Likewise, these respondents cannot do so. "Congress drew no such dis-

tinction, but instead saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause . . ." **Amalgamated Association, etc., v. Wisconsin Employ. Rel. Bd.**, supra, at 391, 363.

IV.

The writs of certiorari should be granted, and the judgments of the Court of Appeals of Tennessee, reversed.

Respectfully submitted,

By .....

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Of Counsel.

Dated: ....., 1957.

Certificate of Service.

I, Albert Williams, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of the United States hereby certify that a copy of the foregoing Memorandum Reply Brief and Appendix was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33 by depositing same in the U. S. Post Office at Nashville, Tennessee, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

Albert Williams

Dated: Aug. 2, 1957.

APPENDIX "A."

Kerrigan.

"Felts, Judge: This is a suit by a shipper for an injunction to require common carriers to continue rendering their customary service to complainant, and to restrain a labor union and its officers and agents from interfering with any carrier or its employees in rendering such service."

". . . . The prayer was for a temporary injunction restraining defendant carriers from failing or refusing to provide their customary service to complainant, and restraining Local 327 and its officers and agents from interfering with such service; and that, on final hearing, such injunction be made permanent."

Aladdin.

"Felts, Judge: The principal case is an injunction suit by a shipper against 14 common carriers to compel them to continue rendering complainant their customary service, which they had stopped because their truck drivers refused to cross another union's picket line at complainant's plant. After a hearing the Chancellor granted a preliminary injunction, as prayed, which, following the practice in equity, ran against defendants 'and their officers, agents, and employees.' That case is still pending below.

"The phase of it now before us **is an ancillary proceeding against some of these employees, their union, and its officers for contempt for violating the injunction.**" (Emphasis supplied.)

Kerrigan.

"Defendants Cook and Hoover were Tennessee corporations and common carriers engaged in transporting freight for hire by motor truck on the highways in this and in other states, under certificates of convenience and necessity issued by the Interstate Commerce Commission and by the Tennessee Public Service Commission. Defendant Local 327 was the union and the collective-bargaining representative of the truck driver and freight-handling employees of Cook, Hoover and other motor truck carriers with their principal places of business in Nashville."

"Defendants Cook and Hoover filed answers, each admitting its failure to render the service, but averring that this was because its employees refused to cross the picket line or to handle freight for complainant; and that each of them had a contract with Local 327 which permitted its employees to refuse to cross another union's picket line or to handle 'unfair goods.'"

Aladdin.

"Defendants are corporations and common carriers of freight by motor truck, operating under certificates of convenience and necessity from the Interstate Commerce Commission and from the Tennessee Public Service Commission. Their truck drivers and helpers are all members of Local 327, with which defendants have a collective bargaining contract which covers these employees and which contains the following provision:

"'It shall not be in violation of this contract if any employee or employees refuse to go through the picket line of a Union or refuse to handle "unfair goods." Nor shall the exercise of any rights permitted by law be violation of this contract.'"

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"On January 12, 1953, after a hearing, the Chancellor entered a decree overruling this plea and granting a temporary injunction, as prayed, enjoining Cook and Hoover 'from failing or refusing, while exercising the duties and privileges of a common carrier, to provide the customary carrier service to complainant • • •' and enjoining Local 327 and its officers and agents from interfering with any carrier or its employees in rendering such service."

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"On February 11, 1955, as before stated, the Chancellor granted a temporary injunction, as prayed, enjoining defendants 'and their officers, agents, employees, and confederates' from failing and refusing to provide customary service to complainant, under the legally established rates and rules applicable to such service, as the same had been rendered before February 3, 1955."

"Complainant then began filing petitions against the carriers, their employees, Local 327, its officers, and Local 5003 and its officers, for contempt for disobeying the injunction.

"The main charge in them was that Local 327, its officers, Local 5003, and its officers, entered into a conspiracy to violate the injunction and to induce the truck drivers to violate it by refusing to cross the picket line to render the service at the plant. . . ."

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"Local 327 and its officers and agents appealed and insist that the Chancery Court had no jurisdiction of the subject matter of the suit; that the carriers' employees were exempted by this contract from any duty to render service at the picketed plants; and that the injunction violates appellants' rights under the 13th and 14th Amendments to the Constitution of the United States."

Aladdin.

"The defense urged for them [Local 327 and its members] is twofold: (1) That the court had no jurisdiction of the case, the injunction was void, and they were not bound to obey it; but (2) that there is no sufficient proof that they did disobey it or were guilty of the contempt charged. They contend that the court had no jurisdiction of the subject matter of this suit, because it involved a 'labor dispute' within the exclusive jurisdiction of the National Labor Relations Board, or an administrative matter within the exclusive jurisdiction of the Interstate Commeree Commission or of the Tennessee Public Service Commission."

"**The subject matter of the suit is the controversy between the shipper and the carriers.** It does not involve any employer-employee relation or any labor dispute. It does not involve the dispute between complainant and its employees or seek to stop their picketing. **The only**

"The subject matter of a suit is, of course, the matter presented by the pleadings—the bill and the pleas and answers thereto. **The matter thus presented in this case is a controversy between a shipper and defaulting carriers.** It does not involve any employer-employee rela-

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conduct complained of is the conduct of the carriers in not rendering the service and the conduct of appellants in interfering to prevent such service." (Emphasis supplied.)

"That this conduct is unlawful cannot be denied. It violates the common law and the statutes of Tennessee, as averred in the bill and above set forth. Under the rule in equity and under our statute (TCA 65-1523), complainant

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tion or any labor dispute between the parties to the suit.

"There was no labor dispute between complainant and its employees. While there was a labor dispute between complainant's affiliate and the latter's employees, and while they were on strike and were picketing the plant, this suit did not involve that dispute or seek to interfere with the strike or to stop the picketing. **The only conduct complained of by the suit is the conduct of the carriers in not rendering their service, and the conduct of appellants in interfering to prevent each service.**" (Emphasis supplied.)

"That this conduct is unlawful cannot be denied. It violates both the common law and the statutes of Tennessee. At common law the calling of a common carrier is a public trust. The carrier and its employees owe a

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shipper is entitled to an injunction to compel the carriers to render the service, and to restrain appellants from interfering therewith. TCA 65-1523, 65-1524; Gibson's Suits in Chancery (4th ed.), sec. 804; Hogan v. Nashville Interurban Railway Co., 131 Tenn. 244, 174 S. W. 1118, LRA 1915E 788, Ann. Cas. 1916C 1162; Memphis News Publishing Co. v. Southern Ry. Co., 110 Tenn. 684, 75 S. W. 941, 63 LRA 150.

"Such is the general rule of equity in state and federal courts. **A shipper is entitled to an injunction to require a common carrier to perform its duty of carriage; and, according to equity practice, the injunction runs against the carriers' 'agents and employees,' as, of course, and without their being made parties to the suit.** (Emphasis supplied.) 2 Daniell's Chancery Pleading and Practice (6th Am. ed.) 1673; Gibson's Suits in Chancery (3rd ed.), sec. 834. . . ." (Emphasis supplied.)

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duty to serve all shippers alike and to receive, carry and deliver whatever kind of goods it holds itself out to carry, at the applicable rates; and our statutes declare this duty and make a violation of it a misdemeanor. TCA 65-422, 65-512, 65-514, 65-1523, 65-1524.

"Under the general rule of equity, and also under our statute (TCA 65-1523, 65-1524), **a shipper is entitled to an injunction to compel a common carrier to render service, and to restrain other persons from interfering with the rendering of such service.** Gibson's Suits in Chancery (4th ed.), sec. 804. . . .

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"Their argument is that the conduct here enjoined was either a 'concerted activity' protected by section 7 and section 13 of the Wagner and the Taft-Hartley Acts (29 USCA, secs. 157, 163), or a union 'unfair labor practice' under section 8 (b) (4) (A) (D) of that Act (29 USCA 158 (b) (4) (A) (D)), of which the exclusive jurisdiction was in the National Labor Relations Board; and that in either event, the state court had no jurisdiction to enjoin such conduct.

"Thus by section 7 employees have the right to join or assist labor unions, and to engage in other 'con-

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"This is also the general rule of equity in state and federal court. A shipper is entitled to an injunction to require the carrier to perform its duty of carriage, and **the injunction against the carrier also runs against his agents and employees, as a matter of course and without their being made parties to the suit.** . . . (Emphasis supplied.)

"The argument for appellants is that the conduct here enjoined was either a 'concerted activity' protected by section 7 and section 13 of the federal Acts (29 USCA, secs. 157, 163), or an 'unfair labor practice' prohibited by section 8 (b) (4) (A) (D); and that in either event the exclusive jurisdiction was in the National Labor Relations Board, and the state court had no power to enjoin such conduct.

"Thus by section 7 employees have a right to join or assist labor organizations, to bargain collectively

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certed activities' for collective bargaining or other mutual aid or protection; while section 13 provides that nothing in the Act, except as therein provided, shall be construed to interfere with 'the right to strike'; and section 8 (b) outlaws and defines certain union conduct as 'unfair labor practices.'	through their own chosen representatives, to engage in other 'concerted activities' for collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities; while section 13 provides that nothing in the Act, except as therein provided, shall be construed to interfere with 'the right to strike'; and section 8. (b) outlaws certain kinds of union conduct as 'unfair labor pratices.'
"1. When a suit upon a matter of labor relation is brought in a state court and the court's jurisdiction is denied, the court must determine the question for itself. It is true there is language in some of the cases to the effect that a state court has no authority to determine a question of unfair labor practice under the federal Acts and that it must be determined by the National Labor Relations Board. But it is of the essence of judicial duty that the court must decide the	"First. When such a suit as this is brought in a state court and the court's jurisdiction is denied upon a claim of exclusive federal jurisdiction, the court must determine the question for itself. It is true it is sometimes said that a state court has no authority to determine such a question but the matter must be determined by the National Labor Relations Board. But it is of the essence of judicial duty that the court must decide the case, including the question of its

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case, including the question of its own jurisdiction. It cannot stop and refer the question to the Board; nor will a federal court interfere to forestall the state court's determination. Amalgamated C. W. of A. v. Richman Bros.; supra."

"We come to the question whether the union conduct here is a 'concerted activity' under sections 7 and 13 so as to be protected from state power. This case does not involve any employer-employee relation or any labor dispute between the parties. **The only conduct involved is the refusal of the carriers and the employees to render the service and the only union claim is that of the right of its members to refuse to cross another union's picket line or to handle 'unfair goods,' or goods which have crossed or are destined to cross such picket lines.**

"This right of union members to refuse to cross another union's picket line is, of course, not as important as their right to refuse to

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own jurisdiction. It cannot stop or send the case to the Board; nor will a federal court interfere to forestall the state court's determination. Amalgamated C. W. of A. v. Richman Bros., supra."

"We come, then, to the question whether the conduct here enjoined is a 'concerted activity' under sections 7 and 13 so as to be protected from state power. As before stated, this case does not involve any employer-employee relation or any labor dispute between the parties to the suit. It is a controversy between complainant and the defaulting carriers. **The only conduct involved is the refusal of the carriers' truck drivers, members of Local 327, to cross the other union's picket line and render the service.**

"The right of members of a union to refuse to cross another union's picket line is, of course, not as important as their right to refuse

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cross their own picket line. In the latter case there is self-interest which justifies 'concerted activities' which would otherwise be illegal. This right to refuse to cross another union's picket line has been a potent weapon in Labor's fight for the gains it has made, and no true friend of Labor wishes to see this weapon weakened." (Emphasis supplied.)

"But this right to refuse to cross another union's picket line is not one of the basic, vital interests of Labor, such as the right of workers to self-organization; their right to collective bargaining by representatives of their own choosing; their right to strike in support of their demand for higher wages and better hours and working conditions; and their right to be engaged in peaceful picket-

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to cross their own picket line. This latter right is no less than part and parcel of the right to strike for a lawful purpose or the right to support a lawful strike. They may exercise this right even though they thereby inflict injury on the other party to the dispute. Their self-interest justifies 'concerted activity' which would be unlawful if done by persons without any unity of interest. Montgomery Ward & Co. v. Northern Pacific Term. Co., supra, 128 F. Supp. 504, 32 LRRM 2386." (Emphasis supplied.)

"The right to refuse to cross another union's picket line is an important right to Labor, but it is not one of the basic, vital interests of Labor, such as the right of workers to self-organization; their right to collective bargaining by representatives of their own choosing; their right to strike in support of their union demand for higher wages and better hours and working conditions; their

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ing to support a lawful strike.

"Since the **union conduct here** does not involve the right to strike, it would seem that section 13 does not protect such conduct; and since it does not involve the right to engage in peaceful picketing or any of the other vital rights of workers, it would seem not to be a 'concerted activity' within the protection of section 7. At least we have been able to find no Supreme Court decision holding that the right to refuse to cross another union's picket line is a 'concerted activity' protected by section 7." (Emphasis supplied.)

"It appears that the right of union employees to refuse to cross another union's picket line is not a federally protected right, but only a matter of contract, and the employer and employee are free to contract as they wish

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right to engage in peaceful picketing to support a lawful strike, all of which rights are protected by section 7.

"Since the **union conduct here** does not involve their right to strike, it would seem not to be within the protection of section 13, and since it does not involve the right to engage in peaceful picketing, or any of the other vital rights of workers, it would seem not to be a 'concerted activity' within section 7 so as to be protected from state power. At least we have been able to find no Supreme Court decision holding that the right to refuse to cross another union's picket line is a 'concerted activity' by section 7." (Emphasis supplied.)

"It appears that the right of union employees to refuse to cross another union's picket line is not a federally protected right, but only a matter of contract, and the employer and employee are free to contract as they wish

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about the matter. As we understand, it was so held in National L. R. Bd. v. Rockaway News Supply Co., 345 U. S. 71, 97 L. Ed. 832, 31 ALR 2d 511; 31 LRRM 2432. It was said:

" 'In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein "shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act • • •." This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary

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provisions if they consider them appropriate to the particular kind of business involved.'

"But whatever may be the nature of this right not to cross another union's picket line, it is not beyond the reach of state power when it is employed for a purpose contrary to state law. Indeed, the more important right of picketing or to strike is not beyond state control when it is employed for purposes made unlawful by state law. International Union U. A. W. v. Wisconsin Employment Relations Board, 336 U. S. 245, 257, 93 L. Ed. 651, 664, 23 LRRM 2361, and cases there cited; Local Union No. 10 v. Graham, 345 U. S. 192, 97 L. Ed. 946, 32 LRRM 2577; United Constr. Workers v. Laburnum Constr. Corp., supra; United Auto A. & A. v. Wisconsin Employment Relations Board, supra; Montgomery Ward & Co. v. Northern Pacific Term. Co., supra, 128 F. Supp. 506, 509, 32 LRRM 2386.

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provisions if they consider them appropriate to the particular kind of business involved.'

"But whatever may be the nature of this right of union men to refuse to cross another union's picket line in general, it is not protected by section 7 when it is used to accomplish an object forbidden by state law. The 'concerted activity' protected by section 7 is lawful activity, not activity which violates the state law. Indeed, the more important right to picket or to strike is not beyond state power when exercised in a manner contrary to state law. International Union (Briggs-Stratton Case) v. Wisconsin Employment Relations Board, supra; Allen-Bradley Local v. Wisconsin Employment Relations Board, supra; Giboney v. Empire Storage and Ice Co., 336 U. S. 490, 93 L. Ed. 834, 23 LRRM 2505; Local Union No. 10 v. Graham, 345 U. S. 192, 97 L. Ed. 946, 31 LRRM 2444; United Constr. W. v.

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"Nor was the union conduct here, in our opinion, an 'unfair labor practice' under section 8 (b) of the federal Act so as to be beyond state power. It must be borne in mind that in this conduct, this union was not on a strike, not engaged in picketing, asserting any of the other basic rights of labor. As stated, **the conduct was only a refusal to cross another union's picket line, which was being maintained to support a lawful strike by the other union.**"

"So, we conclude that the conduct here enjoined was neither protected as a 'concerted activity' under sections 7 and 13 nor pro-

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Laburnum Construction Corp., supra; Auto Workers v. Wisconsin Employment Relations Board, ... U. S. ..., ..., ... L. Ed. ..., supra.

"The conduct here enjoined was not, in our opinion, an 'unfair labor practice' under section 8 (b) of the federal Act so as to be beyond state power. When this suit was brought and the injunction issued, Local Union No. 327 was not on a strike, not engaged in picketing complainant's plant, and not asserting any of the other basic rights of labor. **The only conduct enjoined was the conduct of the carriers and their truck drivers, members of Local 327, in refusing to render the service, which involved crossing another union's (Local 5003's), picket line which was being maintained to support a lawful strike by Local 5003.**"

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hibited as an 'unfair labor practice' under section 8 (b). Moreover, it does not appear that the federal Act affords any remedy for this conduct, or that the federal Board has any power to grant any relief to the shipper against those defaulting carriers and the unlawful conduct of appellants."	
"We think there is no merit in appellants' claim that the carriers' employees were exempted by their contract from the duty to render service at the picketed plants. This contract bound only the parties thereto. It did not affect the rights of third persons. **Such a contract cannot excuse defendant carriers and their employees from performing their public duty of carriage.** Memphis News Publishing Co. v. Southern Ry. Co., supra." (Emphasis supplied.)	"Appellants rely on the provision of the collective bargaining contract above quoted. That merely said it would not be a breach of the contract if an employee refused to go through the picket line of a union to handle 'unfair goods.' That contract could not bind third persons or affect the rights of the public. **Moreover, insofar as it attempted to relieve the carriers and their employees of their duty to the public, the contract would be illegal and void.** Memphis News Publishing Co. v. Southern Ry. Co., supra, 110 Tenn. 703, 705, 95 S. W. . . ." (Emphasis supplied.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~976~~ 116

DOUGLAS McCRARY and M. M. BRATTON, ET AL.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC.,
and ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM OF RESPONDENTS IN ANSWER TO PETITION FOR WRITS OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 976

DOUGLAS McCRARY and M. M. BRATTON, ET AL.,
Petitioners,

v.

ALADDIN RADIO INDUSTRIES, INC.,
and ALADDIN INDUSTRIES, INC.,
Respondents.

MEMORANDUM OF RESPONDENTS IN ANSWER TO PETITION FOR WRITS OF CERTIORARI

To the Honorable, the Supreme Court of the United States:

Come now the respondents in the above styled action and in reference to the Petition for a Writ of Certiorari recite, submit, and plead as follows:

I. TECHNICAL HISTORY OF THE LITIGATION

The two suits in respect to which the petitioners are here asking a writ of certiorari are ancillary in character. In the principal actions, from which these ancillary suits derive, the respondents have secured preliminary and are now seeking permanent, injunctions from the Chancery Court of Davidson County, Tennessee. In the preliminary mandate the Chancellor ordered a number of truck companies as common carriers to pick up and deliver freight in their customary manner and without discrimination at the plant of the two respondents. In the ancillary proceedings citations for contempt were issued against a number of common carriers, a number of truck drivers employed by them, and other parties. After a series of hearings, the citations were dismissed against the common carriers and sentences for contempt were imposed upon eighteen truck drivers. Like sentences were imposed upon Teamsters Local No. 327 and its president for conduct designed to prevent compliance with the Court's decree.

Appeals from the Chancellor's judgments were taken to the Court of Appeals, Middle Section, State of Tennessee. In an elaborate opinion which comprehended findings of fact and conclusions of law the Court of Appeals affirmed the judgments of the Chancellor and upheld the sentences for contempt. Writs of certiorari were then sought from the Supreme Court of Tennessee and were denied. The persons adjudged in contempt now seek from the Supreme Court of the United States a writ of certiorari and ask it to review the two ancillary suits.

II. THE ISSUE AND THE POSITIONS OF THE PARTIES

At the outset let it be understood that this case,[1] is not of a kind with, and does not stand in the line of, *Anheuser-Busch*, *General Drivers*, and *Kerrigan*.[2]

The line of cleavage between this and the *Kerrigan* case, which is the latest of the three cases and typical of them all, will be spelled out in detail in the recitation which follows. For the present it is sufficient to point out that in the *Kerrigan* case the question involved was the validity of an injunction against a labor union, whereas in the instant case the dominant —and in fact the only real—issue is the validity of judgments for contempt imposed separately upon some eighteen truck drivers and upon a local union and its president for conduct designed to prevent compliance with the mandate of the Court.

In the *Kerrigan* case a state court had imposed prohibitions upon collective activities by a labor organization, thus invading an area which by Act of Congress had become the preemptive domain of a federal agency. This Court, therefore, struck down the injunction against the labor union because it was found to be void ab initio. To the contrary, in the instant case, the injunction was in strict accord with the law. It was sought and obtained against a number of defaulting motor truck companies and against persons in their employ who, by virtue of their

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[1] In this memorandum the two ancillary actions are referred to as "this case" or "this suit." The singular is justified because in no essential respect do the two actions differ.

[2] *Weber* v. *Anheuser-Busch*, 348 U. S. 468 (1955); *General Drivers* v. *American Tobacco Co.*, 348 U. S. 978 (1955); *Teamsters Union* v. *Kerrigan Iron Works, Inc.*, 77 Sup. Ct. 1055 (1957).

strategic positions, were able to effect or to prevent the resumption of common carriage in the customary and lawful manner. The mandate did not run against any labor union, its officers or members, and it did not impose any prohibition upon any collective activity of a union. Its one objective was to secure to the respondents in the customary manner and without discrimination the common carrier service to which, under the laws of the state, they were entitled. In its terms and in its administration there was strict adherence to this single purpose.

The contemnors in the instant case have not met the charge of contempt simply and directly. The individual contemnors have entered no denial of the acts and things done of which they are accused and have interposed no plea in defense to the charge that they have flouted the court and attempted to prevent compliance with the mandate. In their appeal to this Court they have ignored the issue of contempt and seek to excuse themselves upon the ground that they were engaged in collective activities under union auspices. The gist of their contention seems to be that the injunction, however valid it may be in respect to common carriage, cannot comprehend within its coverage employees of the motor truck companies who are members of a labor union. In the court below each of the contemnors pleaded that he had acted as an individual and that his course of conduct was not dictated or in any way affected by the Union. Now they argue that their conduct falls within the provisions of sections 7 and 8(b)(4) of the National Labor Relations Act[3] and, as such, is subject in the

[3] 49 Stat. 452 (1935), as amended 29 U. S. C. §§ 157, 158(b)(4) (1952).

first instance to the jurisdiction of the National Labor Relations Board.[4]

There is and can be no charge by the petitioners that they have not had their day in court, for, as this record, with its sheaf of documents, abundantly attests, they were given every opportunity to present their defenses in the court below. The pleas which they interposed have received protracted, penetrating, and conscientious consideration from a Court of Chancery, the Court of Appeals, and the Supreme Court of the State of Tennessee.

It is the position of the respondents that the injunction was properly issued and that the contemnors, like other officers and employees of common carriers, are subject to it. When they refused to obey the proper mandate of the court below, they subjected themselves to punishment for contempt, and they cannot now, by relying on issues not present in the original proceeding, escape the consequences of their wrongdoing.

III. THE BACKGROUND OF THE CONTROVERSY

The respondents in this case are Aladdin Industries, Inc., and Aladdin Radio Industries, Inc.[5] Industries and Radio are affiliated but separate corporations, engaged in different businesses. Industries owns a

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[4] The National Labor Relations Act and the National Labor Relations Board are hereinafter often referred to as the Act and the Board respectively.

[5] In this memorandum these two companies will be referred to respectively as Industries and Radio. The petition for *certiorari* and its appendices will be referred to as (P. .....). Following the style of the petition, the record in the *Radio* case will be referred to as (R. .....) and that in the *Industries* case as (RA. .....).

manufacturing plant near Nashville, Tennessee, a part of which is leased to and occupied by Radio; the remainder is utilized by Industries. The two concerns use the same entrances to the plant. Each of the companies is both consignee and shipper of a large amount of freight in both interstate and intrastate commerce. As going concerns the two corporations are dependent upon access to common carriage, motor trucking being the most important mode utilized. Each company has separate employees represented by different locals of the United Steelworkers of America. Local 5003 represents the employees of Radio and Local 4802 those of Industries.

On January 24, 1955,[6] the collective bargaining contract between Local 5003 and Radio expired. On the next day the employees of Radio went on strike. Local 5003 placed and maintained pickets at the entrances to the plant. The employees of Industries, however, were not involved in any dispute with their employer and did not strike. It was only because of the irrelevant fact that the two companies had a common situs that any pickets were set about the premises of Industries. Its employees, although belonging to another local of the same union, recognized that Industries was itself not picketed and continued to cross the picket line in going to and coming from work.[7] In the weeks that followed, however, the common carrier service of both Radio and Industries became more and more irregular, though there was never any complete cessation. The failure

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[6] All dates referred to in this document fall within the calendar year 1955.

[7] P. 28.

of common carriage took many distinct forms. Some companies continued their regular service; some did not.

On February 8, Industries filed an injunction bill against seven of the several carriers which had been serving it.[8] On February 11, after a hearing, the Chancellor granted a preliminary injunction as prayed.[9] The defendants were enjoined "from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service."[10] After the issue of this injunction, the defendant carriers resumed their customary service to Industries, transporting shipments to and from its plant, and their employees crossed the Local 5003 picket line without incident. The mandate was obeyed and customary services were furnished to Industries until May 17 when again there were refusals to pick up and deliver.[11]

In the meantime, common carrier service to Radio had suffered a like but more severe interruption. On March 23, more than a month after Industries had obtained its injunction, Radio filed a petition against eleven common carriers by motor truck, seeking similar relief.[12] After notice and hearing such an injunction issued.[13]

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[8] RA. 11.

[9] RA. 23, P. 95.

[10] *Ibid.*

[11] P. 35-36.

[12] R. 7.

[13] R. 17, P. 80.

On April 8, Radio filed a petition in the Chancery Court for attachment for contempt against five named employees of the defendant carriers.[14] It alleged that each of them had been instructed by his carrier-employer to deliver a shipment to the complainant, Radio, and in refusing to do so was guilty of contempt for wilful disobedience of the decree. Similar petitions were lodged with the Chancery Court by Industries against a number of common carriers and some of their employees.[15]

In a number of rulings the Chancellor dismissed charges of contempt against the accused carriers on the ground that they had done all within their power to secure compliance.[16] All of them, however, remained subject to the preliminary injunction. The truck-driver employees of the common carriers severally pleaded that they had refused to cross the picket line because of fear of violence to themselves or to their families.[17] The Chancellor accepted their "confession" but rejected their "avoidance" because no evidence of violence, actual or threatened, was produced.[18] Accordingly, sentences of contempt for flouting the mandate of the Chancery Court were imposed.[19]

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[14] R. 21.

[15] The various petitions were filed between May 17 and June 20. The Chancellor dismissed several of the petitions *in toto;* he dismissed others as concerned certain defendants. Altogether 13 common-carrier employees were found guilty of contempt in the *Industries* case. See RA. 208, 210.

[16] RA. 210.

[17] For example, see RA. 150, 162, 174, R. 40.

[18] P. 29, 62.

[19] P. 62.

IV. THE CLEAR CUT ISSUE OF CONTEMPT

In this ancillary case the single, simple, and direct issue is the power of a court in chancery to secure compliance with its mandates. In concrete terms the issue is whether the trial court below had authority to instrument its decree and to take whatever measures were necessary and proper to effect the objectives the mandate was designed to secure. For their validity, all secondary questions must relate to this dominant issue.

1. The Procedure in Chancery

The sentence for contempt in question here were not hastily or lightly imposed. It was only after a period of study, of gathering all facts and authorities, and of thoughtful consideration that the Chancellor issued the contempt decrees.

A number of pleas in defense were put forward by the employees of the common carriers cited for contempt. Among them was the belated contention that either the injunction was not valid or that it did not apply to employees who were members of a trade union. The Chancellor received this challenge as an open question and went so far as to suspend the injunction until he was able to satisfy himself as to his jurisdiction. On April 4, 1955, this Court handed down its decision in *General Drivers* v. *American Tobacco Co.*,[20] which was at once seized upon and capitalized by the employees cited for contempt. Although they were pleading individual conduct and the *General Drivers* decision related to activities collective in character,[21]

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[20] 348 U. S. 978 (1955), reversing the Court of Appeals of Kentucky, 264 S. W. 2d 250 (1954).

[21] See the petition for the injunction in the *General Drivers* case, found in the Transcript of Record of that case, October Term, 1954, No. 186, p. 1.

the employees cited for contempt sought the benefit of its coverage. On May 27, the Chancellor dismissed all petitions for contempt which had reference to conduct during the period the injunction was suspended.[22] He announced that he had jurisdiction and that in the future the injunctions theretofore issued would be strictly enforced.

He also stated that he would not require a union member to cross his own picket line. On June 10 he reduced this oral ruling to a written order; imposed upon it the necessary limitations and held,

> [T]he Court will not compel a member of a Union, which is the duly authorized collective bargaining representative of the complainant's employees, to cross a picket line established at the complainant's plant by said bargaining representative and advertising a lawful strike against the complainant.[23]

2. The Case of the Eighteen Individual Contemnors

In seeking the injunctions Radio and Industries stood upon their ancient and established right to common carriage. They grounded their demands upon the common law and the statutes of the state. In accordance with Tennessee law and practice the injunction ran against the common carriers, "their officers, agents, employees . . . and/or confederates."[24] It applied to

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[22] R. 108. P. 60. It is to be noted that none of the acts for which the Petitioners in this case were sentenced for contempt were committed during the period in which the injunction was suspended. They were either before or after that period.

[23] P. 60.

[24] P. 95. The language in the *Radio* injunction is "their officers, agents, employees and all persons acting for or in concert with them." P. 80.

persons connected with the companies who were in a position to affect or to prevent the resumption of common carriage. No injunction was sought against any labor union or any member thereof and there was no allegation of collective activity or of unfair practice. The mandate issued contained no prohibition upon the right of workers to promote organization, to bargain collectively, or to engage in any other lawful activity. It was the resumption of pick up and delivery by defaulting carriers, and that alone, which Radio and Industries sought to secure.

All of the employees of the common carriers cited for contempt filed answers. In these answers, many of which were returned under oath, each of the cited employees insisted that he and he alone had made the judgment that he would not cross the picket line. Each made the additional statement that no orders to or pressure upon him had come from his union.[25] The testimony of these employees at the hearing, necessarily under oath, was to the same effect.[26] A like statement

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[25] P. 29, 37. See for example, RA. 154, 162, 174, R. 40. The following excerpt from a sworn answer is typical:

> [R]espondents would show that each and every one of them makes his own decision with reference to driving his vehicle, deny that the Local, its officers, or any of the other employees advise or determine when they should or should not cross a picket line or drive in any other locality and deny that it is within the power of the Local Union, the International Union or its officers, as to when they should cross a picket line.

RA. 163.

[26] Typical examples of such testimony are the following. Edward Smith, Treasurer of Local 327:

Q. Does the Local have anything to do about whether or not any

was made in an answer filed by Don Vestal, president, and the other ranking officials of Teamsters Local No. 327. They stated to the court:

> Your respondents deny that the executive officers of Local Union 327 decide whether or not a member of said Local shall respect a picket line, but would show to the Court, that this is a matter left to be decided by the individual member of the Union. Your respondents, as individuals and officers of Local Union 327, have not nor has anyone within their knowledge who is connected with the Union, notified any one of its members to fail or refrain from obeying any orders of this Honorable Court.[27]

Thus the allegations in the pleadings, the orders of the Court, and the testimony of the contemnors are uniformly to the effect that the accused conduct is that of individuals and not of members of a trade union engaged in collective activity.

3. The Pretense of Union Activity

A single lapse from this contention of individual responsibility marks the conduct of the petitioners. Acting upon the suggestion of the Chancellor that he would

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individual crosses or does not cross the picket line, Mr. Smith?
A. We never have.

RA. 543. M. M. Bratton:

Q. Had you been informed by any of the officers of the Teamsters Local to cross or not to cross the picket line, Mr. Bratton?
A. No, sir.
Q. Any decision you make, is that your own decision?
A. That is up to me, to the individual.

RA. 591. See also RA. 564, 588, 615-16.

[27] RA. 128.

not require a member of a union to cross his own picket line, on June 1 Don Vestal, president of Local 327, set up a single picket sign at the vehicular entrance to Industries' plant. This sign, although ordered by Vestal and paid for out of the petty cash fund of the Local, was not authorized by the Union.[28] This solo picket sign bore in large letters which could be read easily at a distance of fifty feet the legend: "Teamsters Union No. 327." Upon it was pasted a message, in ordinary type, inviting the office workers of the plant to join the Teamsters Union. This invitation was "in type so small that it could not be seen or read while the placard was being carried by the picket."[29] Vestal was acting *ultra vires* since he had no authority to attempt to organize the office workers; on the contrary it was provided in the Union's constitution that they could be organized only in connection with teamsters, chauffeurs, warehousemen, and helpers.[30] The transcript contains not one word of testimony to the effect that a single office worker was ever approached and asked to join the Union.[31] On June 17 the picket sign was withdrawn and three days later Vestal made the statement referred to above, that each of the cited employees had acted as an individual and not under Union auspices.

The placing of the sign led to the citation of Don Vestal and Local 327 for contempt. At a hearing on June 20 the Chancellor found—and the Court of Appeals later concurred—that this alleged picketing by

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[28] P. 68.

[29] P. 56.

[30] RA. 476-77. The Union constitution was stipulated.

[31] P. 57.

Local 327 "was neither bona fide nor for a lawful purpose, but was done *solely* for the purpose of attempting to prevent the complainant from receiving common carrier service which this court had decreed it was entitled to receive."[32]

In all, contempt proceedings were instituted against some eighteen truck drivers together with Vestal and the Union. The Court of Appeals, Middle Section, unanimously affirmed the trial court. The Supreme Court of Tennessee declined writs of certiorari. As a last resort the contemnors now seek a writ of certiorari from the Supreme Court of the United States.

4. The Established Power of Chancery Over Contempt

The sentences for contempt were imposed for a violation of a preliminary, not a permanent, injunction. It is established law that while the question of the issue of an injunction is pending the Chancellor has the responsibility for maintaining the status quo. To that end it is his duty to take such measures as may be necessary to insure compliance with his decree. It is likewise the duty of all persons subject to the mandate to obey until the injunction has been set aside by proper judicial process.

In *United States* v. *United Mine Workers*,[33] it was held that a decree of a court, whether correct or erroneous, must be respected until set aside or amended through proper judicial procedure. Even if a court lacks jurisdiction to enter an order, an aggrieved party must assert its challenge by taking the steps which are necessary and proper to secure reversal. It must not,

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[32] P. 68. (Emphasis added.)

[33] 330 U. S. 258 (1947).

by flouting the court and its decree, invite a sentence for contempt as the device for testing jurisdiction. In *Carter* v. *United States*,[34] made canonical by its quotation with approval in the *United Mine Workers* case, it is stated:

> It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. Treines v. Sunshine Mining Co., 308 U. S. 66 . . . Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 403 . . . Stoll v. Gottlieb, 305 U. S. 165 . . . .[35]

It is not and cannot be claimed that the injunction is void *in toto*. It would be a nullity, however, if the Court did not have power to secure compliance from those who were in a position to effect or to defeat compliance with its terms. In Tennessee law its coverage extends to employees and to confederates who

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[34] 135 F. 2d 858 (5th Cir. 1943).

[35] 135 F. 2d at 861, cited in 330 U. S. at 292, n. 57. The Tennessee Supreme Court has recognized the same principle in *Nashville Corp.* v. *United Steelworkers*, 187 Tenn. 444, 450, 215 S. W. 2d 818, 821 (1948):

> The mandates of a Court of Chancery must in all cases be obeyed, according to the spirit of the decree, promptly, faithfully and without question, or evasion. The party, upon whom the order or command of the court operates, is not allowed to speculate upon the equity of the bill, or the legality or regularity of the order or decree, or of the writ issued thereon; but his simple duty is to obey; and when he disobeys it is a a duty the court owes to itself and to the public to punish him at once.

hold such strategic positions. If the Congress in its regulation of labor relations had intended to abridge or deny powers of equity which are traditional and established, the Congress had language with which to say so. As this Court observed in *Amalgamated Clothing Workers* v. *Richman Bros. Co.*,

> We are further admonished against taking the liberty of interpolation when Congress clearly left no room for it, by the inadmissibility of the assumption that ascertainment of pre-emption under the Taft-Hartley Act is self-determining or even easy. As we have noted in the Weber case, "the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds." 348 U. S., at 480. What is within exclusive federal authority may first have to be determined by this Court to be so.[36]

The law and the facts give no basis for any charge that the Chancellor was here guilty of "plain usurpation." There was, therefore, an affirmative duty of obedience until the injunction was set aside by judicial process. Membership in a union is not such a shield as to relieve persons of their obligations as employees or of their responsibilities as citizens.

Nor can immunity from the preliminary injunction be claimed by Don Vestal and Local 327. It may be that viewed in isolation the placing of a sham picket sign is an unfair labor practice and that, as such, jurisdiction in the first instance rests with the Board. It is an axiom of the law, however, that a course of acts and things done is to be viewed, not in isolation, but in its context. The thrust of Vestal here was not at an em-

[36] 348 U. S. 511, 516 (1955).

ployer, but at the Court itself. The Chancery Court found as a fact—and the Court of Appeals concurred—that the act in question was neither prompted by the intent nor justified by the effect, of organizing the office workers. It ruled that the purpose was to flout the Court and to hinder compliance with its decrees. If a truck driver or his union were to offer a bribe to a carrier not to pick up or deliver, or to threaten the family of a carrier official, with the purpose of preventing compliance with the court mandate, there would be no doubt of liability for the unlawful act. Membership in a union is not an immunity to the general law. Federal legislation aimed at giving freedom to workers to act in concert in their quest of a better standard of life is not to be read as granting to them a general indulgence in wrongdoing.

5. The Dilemma of the Contemnors

There are here two—and only two—possible interpretations of the conduct now under review. All of the Petitioners insisted in the Court below that their actions were individually motivated and in no wise controlled by the Union. There was no challenge to these statements by the Chancellor or by any party in interest. In the face of this testimony it can not, in the words of the *Anheuser-Busch* case, be "reasonably deemed"[37] that there is here collective activity under Union auspices. The only alternative is that, in pursuit of some objective which the transcript does not reveal, they were not telling the truth. In that instance they came into a court of equity with unclean hands and lacked standing to challenge the orders given in Chancery.

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[37] 348 U. S. 468, 481 (1955).

V. THE PETITIONERS' QUEST OF ANOTHER FORUM

For want of a valid plea against contempt, the contemnors are forced to look for an issue back of the line. They put forward the argument not that their conduct has been circumspect but that in issuing the preliminary injunction the Court lacked jurisdiction over the subject matter. To that end they insist in sections one through four of their brief that exclusive jurisdiction in the first instance rests with the National Labor Relations Board and in section five that, inasmuch as it concerns common carriage, it is lodged in the Interstate Commerce Commission.

1. Petitioners' Lack of Relevant Authority

Instead of placing the issues here in their larger context, the contemnors seek to employ the stock device of insisting that decision in their favor is compelled by the authority of specific cases. If cases can not be found which are four-square with the instant action, then the instant action is to be made over to fit the cases. They seek by bold and subtle touches to convert the case which was tried in the Court below into the kind of action which will serve their purpose. The paragraphs which follow will attest the tailoring to order which shapes the petition now presented to this Court.

In a footnote the Petitioners have likened the then pending case of *Teamsters Union* v. *Kerrigan Iron Works, Inc.*,[38] to the current action. The decision of this Court reversing the court below will, if their petition for certiorari is granted, doubtless become their dominant defense. The differences, however, between the two cases are fundamental, not formal.

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[38] 77 Sup. Ct. 1055 (1957).

In the *Kerrigan* case an injunction was sought and obtained. It was aimed directly at Teamsters Local 327 and its total membership. Its coverage extended to members of the Local who were in the employ of common carriers not serving the Kerrigan Iron Works. Its charge was that "Local No. 327 and its members . . . have by concerted action . . . coerced and induced . . . carriers to fail and refuse to serve" Kerrigan, and that the "concerted action . . . is in law an unlawful conspiracy and constitutes an illegal boycott, the purpose of such concerted action" being to "force complainant to accede to the terms demanded by the other union . . . ."[39]

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[39] The following excerpt from the bill in the *Kerrigan* case is of interest:

> This complainant is advised and further alleges that the defendant Local No. 327 and its members, many of whom are employees of other motor freight carriers, have by concerted action among themselves coerced and induced such other carriers, in addition to the defendant carriers, and will continue to coerce and induce them by threats of work stoppages and other concerted action to fail and refuse to serve complainant. Complainant has been advised by other carriers in addition to those named as defendants herein, that as a result of the concerted action on the part of the defendant Local No. 327 and its officers, agents and members in refusing to permit service to complainant they will not handle freight consigned to or from the complainant so long as a picket line exists at complainant's plants. In this connection complainant avers that it presently has several actions pending in the Circuit Courts of Davidson County wherein it has been forced to resort to replevin warrants in order to obtain freight consigned and belonging to complainant and illegally held from it by another or other carriers.
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> Complainant alleges that the combined and concerted action among members of the defendant Local No. 327 and by said members and the carriers which employ them, including defendants is in law an unlaw [*sic*] conspiracy and constitutes an illegal boycott, the purpose of such concerted action being

In the instant case no writ has been sought against the Union or any of its members and no mandate has been asked against any activity of a labor union. The preliminary injunction runs only against common carriers and those who are in such strategic positions as to insure or to forbid compliance with the Court's orders. The mandate covers individuals only as employees of common carriers and not as members of labor organizations. It applies only to such truck drivers as serve the plants of Industries and Radio, and to them only so long as they are in the employ of common carriers; only in the course of their employment; and only when in rendering common carriage service to others they withhold it from Industries and Radio and thus discriminate between persons who by law are ac-

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to deprive complainant of public carrier service and to thereby force complainant to accede to the terms demanded by the other union conducting a picket line at complainant's plants which complainant had no legal obligation to do.

Transcript of Record, October Term, 1956, No. 818, p. 15. The fundamental differences between *Kerrigan* and the instant case, as concerns the jurisdictional question, can be readily seen by comparing the above with the original bills in the instant case. They are printed in the Appendix to this memorandum and by reference are made a part of it. It is also of value to compare the injunctions granted in the instant case, P. 80, 95, with the following excerpt from the *Kerrigan* injunction decree:

> [I]t is accordingly ordered . . . that . . . a temporary injunction [shall be issued] enjoining the defendants . . .
>
> . . . .
>
> 2. From coercing or inducing by threats or otherwise the defendant Cook Truck Lines, Inc., or the defendant Hoover Motor Express Co., Inc., or their employees, or any other common carrier or its employees, to fail or refuse or cease to furnish carier service to or from complainant or its places of business; and from hindering or interfering in any manner with the rendition of carrier service to or from complainant or its places of business.

corded equality of access to pick-up and delivery. In the instant case there is no charge of concerted action and no evidence of collective activity. The testimony is all to the effect that each of the contemnors acted as individuals and not as members of a union.

The question in the *Kerrigan* case was the validity of a permanent injunction against a labor union charged with a secondary boycott. In the instant case the concern is with sentences for contempt imposed upon individuals for actions designed to prevent compliance with a preliminary injunction directed against common carriers.

There is in the record of the *Kerrigan* case no testimony that the truck drivers were acting as individuals. The complaint, the mandate, and the record make it clear that the *Kerrigan* case falls clearly within the provisions of section 8(b)(4) of the National Labor Relations Act and that jurisdiction over it rested in the first instance with the National Labor Relations Board.[40]

The two additional cases which are the main reliance of the Petitioners are *General Drivers* v. *American Tobacco Co.*[41] and *Weber* v. *Anheuser-Busch*,[42] on the authority of which in a *per curiam* decision the *Kerrigan* case was decided. This Court was without question right in basing its decision in the *Kerrigan* case upon these two cases, for the three cases are quite alike in the factual situations presented and in the applicable law. All three present instances of collective activity

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[40] For a discussion of the relevant provisions of the Act see subsections 2 and 3, *infra*.

[41] 348 U. S. 978 (1955).

[42] 348 U. S. 468 (1955).

under the aegis of labor unions. They all fall squarely within the orbit preempted for the Board by the Act. All three of these cases are concerned with the collective activity of unions; the instant case is not. No one of the three is concerned with the power of a court of equity to instrument and to secure compliance with its decree. That is the dominant question in the instant case.

2. No Protection Under Section 7

It seems clear from the foregoing that the contentions of the Petitioners are disposed of in the discussion of contempt. If so, the questions of the jurisdictions of the Chancery Court and of its power to instrument its own mandate are not reached. But, even if that issue is still regarded as open, a short excursion into the relevant provisions of the Act and into the cases in which it has been applied will show that the instant case lies outside any area reserved to the Board. A presumption underlying the whole petition is that the Board has exclusive jurisdiction as broad as the domain of labor relations. To the Board, as to other administrative agencies, has been delegated enumerated powers to be exercised in appointed ways subject to specific limitations. By section 303 of the Act [43] a suit for damages by a person injured in his property or business by an unfair practice may be brought in a federal district court or in any other court having jurisdiction of the parties. Thus, not only is a role in labor relations assigned to the judiciary, but the federal and the state courts are endowed with concurrent jurisdiction. The case law in specific terms recognizes the existence of a domain in labor

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[43] 61 Stat. 158 (1947), 29 U. S. C. § 187 (1952).

relations within which the state has authority."[44] Thus it is clear that, as this Court has put it, the Act "leaves much to the States."[45]

In the *Anheuser-Busch* case this Court has laid down three criteria for the assertion of exclusive primary jurisdiction by the Board:

> [W]here the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance.[46]

The coverage of this preemptive domain rests upon the statutory provisions of sections 7[47] and 8[48] of the Act. The language in section 7 is to be read not as an isolated collocation of words but in terms of its history and its objective. In the not distant past a concert of action by employees to improve their situation was subject to the hazard of the old conspiracy laws. Courts, federal and state, obtruded into labor

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[44] *United Constr. Workers* v. *Laburnum Constr. Corp.*, 347 U. S. 656 (1954); *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 301 (1949); *International Union UAW, AFL* v. *Wisconsin Employment Relations Bd.*, 336 U. S. 245 (1949); *Allen-Bradley Local* v. *Wisconsin Employment Relations Bd.*, 315 U. S. 740 (1942).

[45] *Garner* v. *Teamsters Union, AFL*, 346 U. S. 485, 488 (1953).

[46] 348 U. S. at 481.

[47] 49 Stat. 452 (1935), as amended, 29 U. S. C. § 157 (1952).

[48] 49 Stat. 452 (1935), as amended, 29 U. S. C. § 158 (1952).

disputes to tilt the balance against workingmen or even to break strikes. The practice is illustrated in the classic case of *Hitchman Coal & Coke Co.* v. *Mitchell.*[49] As a remedy the Congress, through the Norris-LaGuardia,[50] the Wagner,[51] and the Taft-Hartley[52] Acts, has accorded protection to workingmen acting in concert and has imposed severe limitations upon the labor injunction. The logic of this legislation was anticipated years before in an opinion of Mr. Justice Holmes in *Coppage* v. *Kansas.* A sentence—then in dissent, now in authority—sets it down as the establishment of "equality of position between the parties in which freedom of contract begins."[53] But to establish equality in position is not to create privilege or to depart from equal protection. A liberation of labor unions from the outworn taboo of conspiracy is not to be read as immunity from the general law.

In strict accord with its function, section 7 of the Act confers protection upon a number of specific labor practices which serve as instruments to the collective activity through which a betterment of working conditions and an advance of the standards of life are sought. It grants to employees the right to organize themselves, to form, join, or assist labor organizations, and "to bargain collectively through representatives of their own choosing." An absolute right of a union or of its members to refuse to cross a picket line is not here set down in explicit terms. It must be found, if it

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[49] 245 U. S. 229 (1917).

[50] 47 Stat. 70 (1932), as amended, 29 U. S. C. §§ 101-15 (1952).

[51] 49 Stat. 449 (1935), as amended, 29 U. S. C. §§ 151-67 (1952).

[52] 61 Stat. 136 (1947), 29 U. S. C. §§ 141-88 (1952).

[53] 236 U. S. 1, 27 (1915).

is found at all, within the omnibus clause which reads, "to engage in other concerted activity." But such engagement is sanctioned only if it is done with the purpose of "collective bargaining or other mutual aid or protection."

In its opinions this Court has set down a commentary which underlines the purpose of this grant of protection. In *International Union, UAW, AFL* v. *Wisconsin Employment Relations Bd.*, this Court has said,

> In the light of labor movement history, the purpose of . . . [section 7] becomes clear. The most effective legal weapon against the struggling labor union was the doctrine that concerted activities were conspiracies, and for that reason illegal. Section 7 . . . took this conspiracy weapon away from the employer in employment relations which affect interstate commerce. No longer can any state, as to relations within reach of the Act, treat otherwise lawful activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert.[54]

The Court recognizes that the protection granted is strictly limited to its function. As the Court puts it, "because legal conduct may not be made illegal by concert, it does not mean that otherwise illegal action is made legal by concert."[55] In this connection the Court recalls the report of the House Committee on Conference which shaped this provision. There it is clearly stated that under section 7 "employees are not given any right to engage in unlawful or other improper conduct."[56]

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[54] 336 U. S. 245, 257-58 (1949).

[55] *Ibid.*

[56] *Id.* at 260.

A case directly in point is *NLRB* v. *Illinois Bell Telephone Co.* It is the only decision in which a court has discussed the issue presented here. The Court held squarely that a refusal by individuals to cross a picket line of another union is not activity protected by section 7 of the Act. This Court denied certiorari.[57]

The conduct here in question, set in its context, presents a wilful and deliberate attempt to prevent compliance with the mandate of the Court of Chancery. The "unlawful" and "improper" course of conduct here in question is not to be saved by section 7.[58]

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[57] 189 F. 2d 124 (7th Cir. 1951), *cert. denied*, 342 U.S. 885 (1951). The Court, at 127, 129, said:

> There is no evidence that these eight employees acted in combination or concert. They did not converse with each other or any other person regarding the activity in which they engaged, that is, a refusal to cross the picket line. The record discloses unmistakably that each acted in her own individual capacity.
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> . . . .
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> . . . . We think it is a novel theory that the mere refusal to cross a picket line . . . makes the one who refuses a party to the strike, but even so, . . . such refusal was not for the "mutual aid or protection" of the employees involved. It could have only been for the benefit and aid of those in a different bargaining unit, the representative of which . . . could have obtained nothing from respondent for their benefit.

[58] The Petitioners also claim that their conduct is protected by a proviso in § 8(b)(4) reading, "nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged" in a lawful strike. A simple reading of this proviso fails to divulge a congressional intent to make it an absolute right to refuse to cross a picket line. Congressional methods would be devious indeed if such a negative statement is to be used to establish such an all pervading right. But Congress has used this form of proviso on other occasions without intending to create a positive right. For example, in § 13 of this very Act Congress stated that "nothing in this subchapter . . . shall be con-

3. No Protection Under Section 8(b)(4).[39]

A second shield with which the Petitioners attempt to ward off the charges of contempt is section 8(b)(4). By this provision Congress has recognized a category of unfair labor practices, the adjudication of which in the first instance is entrusted to the Board. Here, Congress, has declared it to be unfair

> for a labor organization or its agents—
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> . . . .
>
> . . . . to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to . . . transport or otherwise handle . . . any goods . . . .

This section seems irrelevant to the present controversy; but, even if the question of its applicability has to be considered, a reading of the statute shows that certain prerequisites are essential to its invocation. The one is that only "a labor organization or its agents" can be guilty of an 8(b)(4) unfair prac-

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strued so as . . . to interfere with . . . the right to strike . . ." 29 U. S. C. § 163 (1952). This Court has held:

> Unless we read into § 13 words which Congress omitted and a sense which Congress showed no intention of including, all that this proviso does is to declare a rule of interpretation for the Act itself which would prevent any use of what originally was a novel piece of legislation to qualify or impede whatever right to strike exists under other law.
>
> . . . .
>
> . . . . What other Acts or other State Laws might do is not attempted to be regulated by this section.

International Union, UAW, AFL v. *Wisconsin Employment Relations Bd.*, 336 U. S. 245, 258-59, 263-64 (1949).

[39] This subsection is the only part of § 8 that is relevant to the instant controversy. It is the only part of § 8 on which Petitioners rely.

tice. Congress did not place acts of individuals in this category, no matter what those acts might be. The plain and literal meaning of these words has been underwritten by numerous opinions of the courts. In *Local 74, United Brotherhood of Carpenters, AFL* v. *NLRB*,[60] this Court, speaking through Mr. Justice Burton, held that "the statute did not require the individual carpenters to remain on this job. It did, however, make it an unfair labor practice for the union or its agents to engage in" action prohibiited by 8(b)(4).[61] Mr. Justice Burton, again speaking for this Court in *NLRB* v. *Denver Bldg. & Constr. Trades Council*, made the same point, section 8(b)(4) "resists a labor organization."[62] He also quoted from the House of Representatives Conference Report that under this section "it was made an unfair labor practice for a *union* to engage" in prohibited activity.[63]

Another requisite of a section 8(b)(4) violation is concerted activity. The statute itself, in specific terms, provides that the labor organization must have engaged in or induced or encouraged employees to engage in "a strike or a concerted refusal."[64] Again the plain meaning of the statute is confirmed by case law. A single citation tells all that need be said. In *NLRB* v. *International Rice Milling Co.* this Court stated, "the applicable proscriptions of section 8(b)(4) are expressly limited to the inducement . . . of *concerted* conduct by

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[60] 341 U. S. 707 (1951).

[61] *Id.* at 713.

[62] 341 U. S. 675, 687 (1951).

[63] H. R. Rep. No. 510, 80th Cong. 1st Sess. 43, quoted in 341 U. S. at 687. (Emphasis added.)

[64] It is alleged by no one and no facts here reasonably indicate that the Petitioners have been on strike.

the employees of the neutral employer."[65] This case has come to be generally accepted as authoritative in this field and has been widely cited in the lower federal courts.[66]

Although the area preempted by the Board in section 8(b)(4) has not been marked out by "metes and bounds," it is evident that the conduct here in question falls far outside its ultimate limits. The respondents have alleged no collective activity, fair or unfair, or actions by a labor organization or its agents. The Petitioners have denied acting in concert. No court has found anything to the contrary.

4. Invocation of the Interstate Commerce Commission

A variation of Petitioners' quest for another exclusive forum demands only a postscript to this section. In their search for a jurisdiction other than the Court of Chancery they adhere to federal administration, but attempt to replace the Board with the Interstate Commerce Commission. This contention has been disposed of by this Court in the classic case of *Louisville & N. R. R.* v. *F. W. Cook Brewing Co.*[67] Section 1(17) of the Interstate Commerce Act is also in point. It reads that "nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to

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[65] 341 U. S. 665, 670-71 (1951). (Emphasis by the Court.)

[66] *Joliet Contractors' Ass'n* v. *NLRB*, 202 F. 2d 606 (7th Cir. 1953); *United Brick Workers* v. *Deena Artware, Inc.*, 198 F. 2d 637 (6th Cir. 1952); *NLRB* v. *Denver Bldg. & Const. Trades Council*, 193 F. 2d 421, 424, 425 (10th Cir. 1952); *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F. 2d 642 (D. C. Cir. 1951); *NLRB* v. *Service Trade Chauffeurs*, 191 F. 2d 65 (2d Cir. 1951).

[67] 223 U. S. 70 (1912). See also *Minneapolis & St. L. Ry.* v. *Pacific Gamble Robinson and Co.*, 215 F. 2d 126 (8th Cir., 1954).

require just and reasonable freight and passenger service for intrastate business . . . ."[68]

In our economy intra and interstate commerce are closely interwoven and the law has recognized that the concurrent jurisdiction of the federal and state government is of course limited by the Supremacy Clause of the Constitution.

VI. THE DEMANDS OF PUBLIC POLICY

The instant case is not a mere controversy between private parties. In a number of ways worthy of mention it is concerned with public policy.

1. The Obscure Motives

The motivation of the Petitioners in the course of conduct here reviewed is obscure. It is the more perplexing because of a shift of position in the presentation of their defense. In the lower court their strategy was predicated upon individual conduct on the part of each of them. In their appeal to this Court they invoke sections of the Act which are concerned with the validity of collective activity.

But, even if motives are obscure, the malady in the petition invites easy diagnosis. The strategy of the Petitioners has been to divert attention from the questions of contempt and of common carriage to a fictitious concern with unfair labor practices. The remaking of the cause of action to secure strategic advantages is of a kind with the setting up of the sham picket to effect an escape from the charge of contempt. In this myopic concern to bring the instant case under the coverage of established holdings, the Petitioners have overlooked fundamentals of the law.

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[68] 24 Stat. 379 (1887), as amended, 49 U. S. C. § 1(17) (1952).

2. Limits of Private Contract

The Petitioners contend that their refusal to cross a picket line is justified by a provision in their collective contract with their common-carrier employers. Such a contention is contrary to the dictates alike of law and of morals. It is elementary that a contract binds only the parties who are privy to it; that persons entering into agreement cannot bargain away the rights of a third party. The law holds no such concept as third-party maleficiary. And, it would seem to need no argument that a private contract, whatever its terms, will not excuse its parties from the performance of mandatory public duties. In the terms of the mandate, whether an employee was or was not a member of a union or of what union is irrelevant. The compulsion upon him was in his capacity as agent or employee of a truck company engaged in common carriage. It would be absurd to say that a fireman can refuse to cross a picket line to put out a blaze, or a policeman to stop a burglary. There would be chaos if employees of a public utility company were allowed to arrest the flow of gas or power or to stop telephone service because a labor dispute had caused a picket line to be thrown around the building occupied by its customers. An injunction upon a hotel to admit a Negro is not to be thwarted by the steps taken by the hotel employees, acting as individuals or in concert, to exclude the guest. A common carrier, through its officers, agents, and employees, has the same type of public duty. An even stronger obligation rests on persons in the same circumstances who are subject to a court decree.

3. Police Power

From time immemorial the dominant responsibility for the maintenance of law and order has devolved

upon the several states. It is the state, not the federal government, which in the first instance is looked to for the suppression of force and fraud. The maintenance of peace and order under which a society, a community, an economy carry on their ordinary activities, involves preventive as well as corrective measures. In the discharge of this obligation, the state is not limited to the use of force. It is its duty and its practice to formulate public policies for the advancement of its agriculture, industry, and commerce. The creation of a "state economy"—a term which often appears in the United States Reports—as an instrument for the advance of the standard of life is recognized as among the foremost of its functions. This general power, whether exercised through the police or by policy, has never been surrendered by the states to the federal government.

4. Access to Common Carriage

In an economy established upon the land, access to the highway came to be a right of first importance. If a man owned a tract of real property completely surrounded by holdings of others, the common law gave him an easement which secured to him access to and egress from his own property. In an economy based upon commerce, a person, natural or corporate, must have access to common carriage if he is to carry on. From the days when the term first entered the language it has been a principle of the law that common carriage shall be available to all, free from discrimination in service and in charges. The thrust of our earlier statutes on the subject was at discrimination, and when by the passage of the original Interstate Commerce Act the federal government entered this field its initial task was not the fixing of a level of rates but the prevention of discrimination. As a result, there has been taken

from the common carriers the power to play favorites for whatever cause or without cause between persons who require their services. The constitutional guarantee of "equal protection" has been given expression in federal and state law. It forbids common carriers to play favorites among their customers.

In the instant case Industries and Radio had recourse to the state court to secure to themselves the access to pick-up and delivery which was available to all shippers and consignees on equivalent terms. In this matter the carriers had no discretion and the injunction was sought to fortify their common-law and statutory duties with a mandate from the state court.

The Congress and the state legislatures have taken from the common carriers the right to choose their own customers or to discriminate between them in services or in charges. It has not lodged so vast a power to play favorites or to decree success or failure in the hands of any private group of persons whether they act as individuals or in concert.

5. The Question of Due Process

The contention of the Petitioners, if it succeeds, would abridge or deny to Industries and Radio their access to common carriage. On the one hand, their appeal to the Chancellor for an injunction to effect the resumption of customary common carriage service would end in a nullity. On the other hand, an appeal by them to the Board for a cease and desist order against the employees who prevented compliance with the court mandate would have no chance of success. Against the facts of this case, as recited above, the requisites of union participation and collective activity could not be met. The right provided by Tennessee

law would be abridged or denied and no effective federal remedy put in its place. The law, like nature, abhors a vacuum, and here if anywhere there is place for the wise admonition of Mr. Justice Jackson in *Garner* v. *Teamsters Union,*[69] that either it is governed by state law or it is left ungoverned. A denial or discrimination in access to common carriage is clearly a taking of property. If sections 7 and 8(b)(4) of the Act are to be interpreted as an abridgement or withdrawal of the states' power to compel access to common carriage, a question of due process is definitely posed.

6. Power Without Responsibility

The contemnors, even if acting as individuals, have usurped a public function and imposed a ban upon the service of common carriers to Industries and Radio. In whatever capacity they have acted they have arrogated to themselves the power to sit in judgment on strikes and at their pleasure to keep the balance even or to tilt it against the employer. The outcome of labor disputes may thus be made to turn upon whether or not the Petitioners permit pickup and delivery. It is contrary to our system of law and our ideas of justice to lodge a power of this kind in private hands. It is the more intolerable when that power is exercised by a number of individuals who hold a dominant position in transportation, a service essential to the operation of the economy. As long ago as 1877, Mr. Chief Justice Waite in the classic case of *Munn* v. *Illinois,* pointed to the danger inherent in the strategic position of those who stood at the "gateways of commerce" and had the power to levy a toll on the passing traffic.[70] In *Trenton*

[69] 346 U. S. 485, 488 (1953).

[70] 94 U. S. 113, 131.

Potteries, Inc. v. *United States* Mr. Justice Stone insisted that the very power of the several companies in an industry to fix prices was enough to merit condemnation as unlawful, for the power to fix prices was the power to fix unreasonable prices.[71] In such an exercise of power a private interest, whether it be of capital or of labor, is irresponsible when it does not have to "answer in another place" for the way in which it has exercised its power. A judicial procedure which allows the contemnors to escape the consequence of their irresponsible exercise of power is tantamount to endowing a number of individuals rightly placed with authority to impose burdens upon commerce, to play favorites among competitors, and to hamper the progress of industry. The adage of Lord Acton, "All power corrupts, and absolute power corrupts absolutely," is applicable here.

VII. THE DISPOSITION OF THE PETITION

At the end the argument turns back to its beginning. The judgments of contempt by the Chancellor were in strict accord with the law and the practice of the state, and imposed upon the contemnors the duty of obedience until the orders were set aside by appropriate process. In imposing these sentences, the Chancellor did no more than was proper and necessary to instrument, and to secure compliance with, his mandatory injunction. In its issue and its administration the mandate was severely limited to the objective it was intended to serve. Its narrow purpose was to secure to the respondents access to common carrier service on the same terms it was available to others. The injunction was not open to valid attack, and the Chancellor, acting only in instances in which the court was flouted, did only

[71] 273 U. S. 392, 397 (1927).

what was necessary to keep his decree from becoming a nullity.

1. Frailties of Petitioners' Case

The Petitioners do not deny their contempt or seriously challenge the validity of the injunction. Instead, they seek by judicial foray to put themselves outside of the Chancellor's jurisdiction. The crux of their argument is that steps taken by the Chancellor to make the decree effective, otherwise not subject to challenge, are invalid against them. They argue that their courses of conduct fall within a province of labor relations over which the Congress has endowed the Board with exclusive primary jurisdiction. Although the sections of the Act from which they seek to draw their immunity are concerned with the collective activities of labor unions directed at mutual self-help, in the Chancery Court each of the eighteen individual contemnors entered the plea that he acted as an individual and not under the auspices of Local No. 327.[72] In the face of such evidence, it cannot be "reasonably deemed" that the contemptuous acts involved the collective activity of a labor union. Although the motivation of the contemnors is obscure, there is not one bit of testimony in the record to indicate that its purpose was mutual self-help. Yet such an objective is a requisite to an invocation of the exclusive jurisdiction of the Board. The Petitioners failed to give to Industries and Radio the access to common carriage which in customary manner they were furnishing to other shippers. The law has

[72] The other two citations are against Teamsters Union No. 327 and Don Vestal, its president. In setting up the picket sign at the vehicular entrance to the plant, Vestal acted without authority from the local union. It is of note that this sign was withdrawn just before he had to answer to the charge of contempt in the Chancery Court.

taken from common carriers the power to discriminate among those who must have access to their services; it has refused to endow even a regulatory agency with such a power. Surely the mere fact of membership in a labor union cannot free the contemnors of a responsibility not to play favorites which as employees of common carriers and as citizens they cannot escape.

2. The Alternatives Before the Court

In accordance with its prevailing procedure, this Court may dispose of the petition before it in one of three distinct ways:

(1) It may—and it seems to us evident that it should—deny the writ. Access to common carriage and labor relations which promote harmony within the economy are alike subjects of public policy. Each has its own domain and neither is called upon to yield priority to the other. In our opinion, the current controversy lies clearly within the domain in which the law secures to all shippers equal access to transportation, and lies far outside the jurisdiction of the Board. There is nothing in the Act to indicate that the Congress conferred upon the Board the power to exercise a veto over the steps taken by a Chancery Court to make its mandate effective. The Chancery Court and the Board each has its jurisdiction in its appointed orbit, and we insist the two orbits do not overlap.

(2) It may grant the writ of certiorari here asked for. A postulate to such a decision is of necessity a recognition of an actual or potential overlap between the authority of the Chancery Court and the jurisdiction of the Board. If such an overlap, actual or potential, exists, very serious issues are raised. Here no help is to be had from the Petition; when exposed

within the context of the current controversy the abstract questions put by the contemnors rapidly disintegrate. But upon the hypothesis of an overlap a number of issues are presented. Included within these, but not limited to them, are the following:

(a) Whether the Act deprives a state court of power to effectuate a decree relating to the performance of common carriage duties by making the decree applicable to all those persons in strategic positions through whom the carrier necessarily acts.

(b) Whether the Act limits the power of the Court to secure compliance with its decree by giving immunity from contempt to employees of common carriers solely because of their membership in a labor union.

(c) Whether the Act grants to certain employees and union officials a privilege, not available to other citizens, to employ unlawful means to flout a state court decree rather than seek their remedies through appropriate judicial procedures.

(d) Whether the Act, if it be construed to limit the power of a state court to secure to business units their right to common carriage, involves a taking of property without due process of law.

But in whatever language they may be shaped, an overlap involves issues of greatest consequence. This case could be made to cut far deeper into the power of the state to shape and to administer its own system of justice than any case yet decided by this Court. In its disposition it carries a potential threat to the independence and sovereignty of state courts in the government of their own affairs.

(3) It may, without hearing and by summary judgment, reverse the decisions of the three courts below.

There can be no quarrel with the disposition of the *General Drivers* case on the authority of *Anheuser-Busch,* or of *Kerrigan* on the authority of these two cases, for the differences between the three cases were too small to invite separate judicial inquiries. But the gulf between this trilogy of cases, which safeguard the rights of employees acting in concert, and the instant case, whose concern is equality of access to common carriage, is too great to be bridged by citations from decisions focused upon labor relations. To decide the instant case by such a resort to *stare decisis* would be to resolve important questions without giving definite answers to the questions or even stating them.

VIII. CONCLUSION

For the reasons stated, we submit that justice, sound judicial administration, and a respect for the federal system all support the conclusion that the proper disposition of this controversy is a denial of the petition asking for writs of certiorari.

Respectfully submitted,

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APPENDIX

TO THE CHANCELLORS OF THE CHANCERY COURT OF DAVIDSON COUNTY, AT NASHVILLE, TENNESSEE

Rule No. 75917

ALADDIN INDUSTRIES, INC., *Complainant,*

v.

ASSOCIATED TRANSPORT, INC., *Defendants.*

Filed February 8, 1955

I

The parties and their residences or places of business are as stated in the caption.

II

Complainant is an Illinois corporation qualified to do business in the State of Tennessee and is engaged in the manufacture of lamps and vacuum bottles. Complainant's plant and offices are located in the City of Nashville, Davidson County, Tennessee, at 705 Murfreesboro Road. The continuation of complainant's business is dependent to a large extent on the services of common carriers by truck in both interstate and intrastate commerce.

III

The defendants are corporations which own and operate truck lines in and out of the City of Nashville and are engaged in the business of transporting freight by motor vehicle for hire as common carriers in interstate commerce and in intrastate commerce.

The common law of the State of Tennessee imposes upon the defendants and each of them, as common carriers, the affirmative obligation to serve all members of the public, including complainant, without discrimination or prefer-

ence. Complainant alleges, on information and belief, that the employees of the defendants, so long as they remain such employees, are under a similar duty to serve the public without discrimination or preference.

IV

Beginning on February 3, 1955, and ever since said date, the defendants and each of them have discriminated against the complainant and have failed and refused wrongfully and unlawfully and without just excuse to handle freight shipped to or offered for shipment by the complainant. Defendant, Super Service Motor Freight Co., Inc., failed and refused on five separate occasions on February 3, 1955, and on three separate occasions on February 4, 1955, to pick up outbound shipments of freight from the complainant's said plant in Davidson County. Defendants, Associated Transport, Inc., and Wilson Truck Co., Inc., each failed and refused on February 3rd and on February 4th to pick up outbound shipments of freight at complainant's said plant. On Monday, February 7, 1955, defendant, Southeastern Motor Truck Lines, Inc., failed and refused to pick up outbound shipments of freight from the complainant's said plant and on the same day defendant, Hoover Motor Express Co., Inc., failed and refused to deliver freight to complainant's plant. Each such failure and refusal by a defendant to pick up freight was preceded by complainant's request to such defendant for carrier service over the established route and at the established rate of each carrier. Defendant, C & D Motor Delivery Company, on February 3, 1955, failed and refused to deliver one trailer load of vacuum bottle jackets from Robertson Can Co., Springfield, Ohio, to the complainant's said plant to which said bottles were consigned. Complainant alleges, on information and belief, that defendant Railway Express Agency, has on hand express consigned to the complainant's said plant in Nashville but has failed and refused to deliver same.

V

Complainant alleges, on information and belief, that the reason why the defendants have failed and refused to deliver shipments to or accept freight shipments from the complainant is that the employees of the defendants have refused to cross a picket line which has been stationed outside of the complainant's said plant at 705 Murfreesboro Road in the City of Nashville. Said pickets are not composed of complainant's employees, they are not making any demands of the complainant, and they are not engaged in any labor dispute with or involving the complainant. On information and belief, said pickets are employees or ex-employees of Aladdin Radio Industries, Inc., which is a different corporation engaged in a different business but which leases space at complainant's said plant. Said pickets are picketing Aladdin Radio Industries, Inc., in connection with an alleged labor dispute between said pickets and Aladdin Radio Industries, Inc. The employees of the complainant are at work and there is no labor dispute between the complainant and its employees. Complainant's employees have been regularly going to and from work and have been passing said pickets.

VI

Complainant avers, on information and belief, that said pickets in the vicinity of complainant's said plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's said plant.

VII

Complainant further alleges that the defendants and each of them, by reason of the facts stated above, are also violating their statutory duties as common carriers which require them to serve all members of the public without discrimination or preference. Said discrimination against

the complainant practiced by the defendants is made unlawful by Sections 5416 and 5418 of the Code of Tennessee and by Title 49, United States Code, Section 3 (1).

VIII

Complainant avers, on information and belief, that the defendants and each of them will continue their illegal refusal to serve the complainant as common carriers unless and until this Court enjoins them, their officers, agents, confederates and employees, to deliver freight shipments to and accept freight shipments from the complainant, as required by law, regardless of whether or not such deliveries will involve the crossing of picket lines.

IX

Complainant avers that by reason of said unlawful acts of the defendants and the threatened continuation of said unlawful acts, the complainant has suffered and will continue to suffer irreparable injury; that adequate damages would be difficult, if not impossible, to ascertain and collect; that the conduct of complainant's business has been seriously damaged and will be progressively and irreparably damaged by reason of the failure and refusal of the defendants to serve the complainant. Complainant avers that it has no adequate remedy at law and that a multitude of suits can be avoided and its business adequately protected only by injunctive action of this Court enjoining the illegal conduct of the defendants.

The Premises Considered, Complainant Prays:

1. That proper process issue requiring the defendants, and each of them, to answer this bill at an early rule date, but the oaths to their answers are expressly waived.

2. That upon such notice as the Court may deem proper, complainant be granted a temporary injunction enjoining the defendants, and each of them, and their officers, agents,

employees and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the customary manner in which such service was provided prior to February 3, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

3. That the injunctive relief herein sought be made permanent at the hearing.

4. That the complainant have such other further and general relief as it may be entitled to in the premises.

THIS IS THE FIRST APPLICATION FOR A WRIT OF INJUNCTION IN THIS CAUSE.

ALADDIN INDUSTRIES, INC.

By J. A. BLAIR

WALLER, DAVIS & LANSDEN

By J. P. DAVIS

Solicitors for Complainant

To the Chancellors of the Chancery Court of Davidson County, at Nashville, Tennessee

Rule No. 76028

Aladdin Radio Industries, Inc., *Complainant,*

v.

Adkins Transfer Company, Inc., et al., *Defendants.*

Filed March 23, 1955

Complainant respectfully shows to the Court:

I

The parties and their residences or places of business are as stated in the caption.

II

Complainant is an Illinois corporation qualified to do business in the State of Tennessee and is engaged in the manufacture of component parts for electronic equipment. Complainant's plant and offices are leased from Aladdin Industries, Inc., a separate but affiliated corporation, and are located at 705 Murfreesboro Road, Davidson County, Tennessee. The continuation of complainant's business is dependent to a large extent on the services of common carriers by truck in both interstate and intrastate commerce.

III

The defendants are corporations which own and operate truck lines in and out of the City of Nashville and are engaged in the business of transporting freight by motor vehicle for hire as common carriers in interstate commerce and in intrastate commerce.

The common law of the State of Tennessee imposes upon the defendants and each of them, as common carriers,

the affirmative obligation to serve all members of the public, including complainant, without discrimination or preference. Complainant alleges, on information and belief, that the employees of the defendants, so long as they remain such employees, are under a similar duty to serve the public without discrimination or preference.

IV

Since the early part of February, 1955, the defendants and each of them have discriminated against the complainant and have failed and refused, wrongfully and without just cause, to handle freight shipped to or offered for shipment by the complainant. Defendant, Wilson Truck Co., Inc., has refused ever since February 25, 1955, to deliver to the complainant a shipment from Aluminum Goods Manufacturing Company, Manitowoc, Wisconsin, consigned to complainant. Defendant, Southeastern Motor Truck Lines, Inc., held a shipment consigned to the complainant from February 25th until March 4, 1955, and repeatedly failed and refused to deliver the same to the complainant's plant. The complainant finally took possession of this shipment. Defendant, St. Louis-Nashville Freight Lines, Inc., has held a shipment of freight consigned to the complainant and has failed and refused to deliver the same to the complainant since February 25, 1955. Said shipment is from Evansville Plating Co., Evansville, Indiana. Defendant, Adkins Transfer Company, Inc., failed and refused to deliver to the complainant a shipment from A. G. Bush Co., Chicago, Illinois, and there was a long delay before complainant finally obtained possession of the same. On March 21st defendant, Adkins Transfer Company, Inc., refused to deliver to the complainant a shipment from James Vibrapowr Co., Chicago, Illinois. On March 22nd the defendant, Hayes Freight Lines, Inc., refused to deliver to complainant a shipment from Motorola Co. of Chicago. Johnson Freight Lines, Inc., has in its possession and has failed and refused to

deliver to the complainant a shipment from Joseph T. Ryerson & Son, Cincinnati, Ohio, consigned to the complainant. Defendants, Silver Fleet Motor Express, Inc., B. & S. Motor Lines, Inc., Associated Transport, Inc., Roadway Express, Inc., and Super Service Motor Freight Co., Inc., have on one or more occasions refused to deliver to the complainant freight consigned to the complainant, but in each case, after considerable delay and inconvenience, the complainant has obtained possession of said shipments.

V

Complainant alleges on information and belief that the reason why the defendants have failed and refused to deliver shipments to or accept freight shipments from the complainant is that the employees of the defendants have refused to cross picket lines which have been stationed outside of complainant's said plant at 705 Murfreesboro Road in Davidson County, Tennessee.

VI

Complainant avers, on information and belief, that said pickets in the vicinity of complainant's said plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's said plant.

VII

Complainant further alleges that the defendants and each of them, by reason of the facts stated above, are also violating their statutory duties as common carriers which require them to serve all members of the public without discrimination or preference. Said discrimination against the complainant practiced by the defendants is made unlawful by Sections 5416 and 5418 of the Code of Tennessee and by Title 49, United States Code, Section 3 (1).

VIII

Complainant avers, on information and belief, that the defendants and each of them will continue their illegal refusal to serve the complainant as common carriers unless and until this Court enjoins them, their officers, agents, confederates and employees, to deliver freight shipments to and accept freight shipments from the complainant, as required by law, regardless of whether or not such deliveries will involve the crossing of picket lines.

IX

Complainant avers that by reason of said unlawful acts of the defendants and the threatened continuation of said unlawful acts, the complainant has suffered and will continue to suffer irreparable injury; that adequate damages would be difficult, if not impossible, to ascertain and collect; that the conduct of complainant's business has been seriously damaged and will be progressively and irreparably damaged by reason of the failure and refusal of the defendants to serve the complainant. Complainant avers that it has no adequate remedy at law and that a multitude of suits can be avoided and its business adequately protected only by injunctive action of this Court enjoining the illegal conduct of the defendants.

THE PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That proper process issue requiring the defendants, and each of them, to answer this bill at an early rule date, but the oaths to their answers are expressly waived.

2. That upon such notice as the Court may deem proper, complainant be granted a temporary injunction enjoining the defendants, and each of them, and their officers, agents, employees and all persons acting for or in concert with them, from failing or refusing to provide customary service to complainant under the legally established rates and rules applicable to such service, and in accordance with the

customary manner in which such service was provided prior to January 25, 1955, that is, from failing or refusing to accept, handle, transport and deliver freight which the complainant or its agents tender to said respective defendants or freight tendered by others for transportation to complainant.

3. That the injunctive relief herein sought be made permanent at the hearing.

4. That the complainant have such other further and general relief as it may be entitled to in the premises.

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ALADDIN RADIO INDUSTRIES, INC.

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Solicitors for Complainant